REGULAR MEETING OF THE MILPITAS CITY COUNCIL

AGENDA

TUESDAY, OCTOBER 06, 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).
You may watch the Council meeting without providing public comment by accessing it via links below:

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

PUBLIC COMMENT INSTRUCTIONS

Oral public comments may be provided live during the City Council meeting by first registering for the zoom meeting in advance by: providing email address (not disclosed) and a name.

Here is the link to register:

https://ci-milpitas-ca-gov.zoom.us/webinar/register/WN_ZZfHL_fvTjaeO1Fkky5V9A

A link will be sent to you to join the City Council meeting in order to give comments. All registered meeting attendees who wish to speak must click on the “raise hand” icon when the Mayor calls for public comments. If participating by calling in, dial *9 to use the “raise hand” feature, and when you are called upon, hit *6 to unmute your phone. Your phone number will be displayed in the live meeting. Staff will call the speakers to begin.

All comments provided shall be limited to three minutes or less as determined by the Mayor/ Chair. All members of the public will be limited to one comment per agenda item, and one comment for non-agenda items. The online written comment form previously used is no longer be available for public comment.

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

ADJOURN TO CLOSED SESSION

(a) City Council will consider the following matters in Closed Session:

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
Pursuant to CA Government Code Section 54956.9(d)(1)
Vibha Shah v. City of Milpitas, et al/City of Milpitas v. Kenneth Louis Kaldy, et al
Santa Clara County Superior Court, Case No. 18CV322398

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
Pursuant to CA Government Code Section 54956.9(d)(1)
Alok Jain, et al. vs. City of Milpitas, et al; Santa Clara County Superior Court, Case No. 18CV325365

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION
Pursuant to CA Government Code Section 54956.9(d)(2)
City as Defendant. 3 potential matters:

(1) Brown Act Demand to Cure and Correct/Cease and Desist Demand
(2) Libel and Slander Allegation
(3) Defamation of Character Allegation

See documents included in the Council agenda packet, as justification.

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 Vice Mayor Nuñez)

PRESENTATION - Proclaim *Fire Prevention Week* October 4 -10, 2020

PUBLIC FORUM
Those interested are invited to address City Council on any subject not on tonight's agenda, orally via zoom webinar (instructions on page 1). Speakers may provide their name and city of residence for the Clerk's record, and comments 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.

ANNOUNCEMENTS AND FUTURE AGENDA ITEMS (7:20 PM)

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

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

READING ALOUD OF THE CITY COUNCIL CODE OF CONDUCT

APPROVAL OF AGENDA

CONSENT CALENDAR (7:40 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 public or staff requests the Council to remove an item from (or be added to) the consent calendar. Any person desiring to speak on any item on the consent calendar should ask to have that item removed from the consent calendar.

C1. Receive City Council calendar of meetings for October 2020 (Staff Contact: Mary Lavelle, 408-586-3001)

C2. Approve City Council meeting minutes for the September 15, 2020 Regular Meeting (Staff Contact: Pam Caronongan, 408-586-3003)

Recommendation: Approve September 15, 2020 City Council meeting minutes drafted by the Deputy City Clerk.

C3. Adopt a Resolution Accepting and Authorizing the City Manager to Execute the Agreement to Accept the 2019 State Homeland Security Grant Program Funding and Approving and Authorizing a Sole Source Purchase for Procurement of Mobile Crash Barriers and Portable Bollards Manufactured by Delta Scientific Corporation; and Approve Budget Appropriation to the Police Department's FY 2020-21 Operating Budget (Staff Contact: John Torrez, 408-586-2408)

Recommendation**:** Adopt a resolution accepting and authorizing the City Manager to execute the Agreement to accept the 2019 State Homeland Security Grant Program Funding, and approving and authorizing a sole source purchase for procurement of Mobile Crash Barriers and Portable Bollards Manufactured by Delta Scientific Corporation; and approve a budget appropriation into the Police Department's FY 2020-21 operating budget.

C4. Adopt a Resolution to Authorize the Chief of Police to Execute the Grant Agreement with the Office of Traffic Safety to Accept the FY 2021 Office of Traffic Safety Selective Traffic Enforcement Program Grant and approve a budget appropriation in the amount of $57,500 (Staff Contact: Jared Hernandez, 408-586-2406)

Recommendations:

a) Adopt a resolution to authorize the Chief of Police to execute the Grant Agreement with the Office of Traffic Safety accepting the FY 2021 Office of Traffic Safety Selective Traffic Enforcement Program Grant.
b) Approve a budget appropriation in the amount of $57,500 for overtime in the Police Department Operating Budget.

C5. Adopt a Resolution to Approve Project Plans & Specifications; Reject a Bid Protest from Pacific Electric Contracting, Inc.; Award a Construction Contract to the Bear Electrical Solutions, Inc. in

the amount of $418,150 for the Enhanced Crosswalk Striping & Beacons/Radar Speed Feedback Signage, Projects No. 3454 and No. 3458; Authorize the City Manager to Execute the Construction Contract; and Authorize the Engineering Director/City Engineer to Negotiate and Execute Contract Change Orders (Staff Contact: Steve Erickson, 408-586-3301)

Recommendation: Adopt a resolution approving project plans & specifications; reject a bid protest from Pacific Electric Contracting, Inc.; award a construction contract to the lowest responsible bidder submitting a responsive bid, Bear Electrical Solutions, Inc., in the amount of $418,150 for the Enhanced Crosswalk Striping & Beacons/ Radar Speed Feedback Signage, Projects No. 3454 and No. 3458; authorize the City Manager to execute the contract with Bear; and authorize the Engineering Director/ City Engineer to negotiate and execute contract change orders in an aggregate amount not to exceed $63,000.

C6. **Adopt a Resolution Granting Acceptance of the Milpitas Skate Park & Snack Shack/Restroom Building Replacement, Projects No. 5111, No. 3424, and No. 6133, Authorizing the City Engineer to File a Notice of Completion, and Authorize him to Issue a Notice of Final Acceptance, and Approve a Budget Appropriation of $52,900 from the Community Facilities District No. 2005 Funds into the Public Works Operation and Maintenance Budget (Staff Contact: Steve Erickson, 408-586-3301)**

Recommendation: Adopt a resolution granting acceptance of the Milpitas Skate Park & Snack Shack/ Restroom Building Replacement, Projects No. 5111, No. 3424, and No. 6133, authorizing the City Engineer to file a Notice of Completion, and authorize him to issue a Notice of Final Acceptance, and approve a budget appropriation of $52,900 from Community Facilities District No. 2005 funds into the Public Works operation and maintenance budget.

C7. **Adopt a Resolution Granting Acceptance of Water Bottle Refill Station Installation Project, CUP 2353 and Authorizing the Director of Public Works to File a Notice of Completion and Issue a Notice of Final Acceptance (Staff Contact: Tony Ndah, 408-586-2602)**

Recommendation: Adopt a resolution granting acceptance of Water Bottle Refill Station Installation Project, CUP (California Uniform Public Construction Cost Accounting Act public works project) 2353 and authorizing the Director of Public Works to file a Notice of Completion and issue a Notice of Final Acceptance after the one-year warranty period has elapsed.

C8. **Adopt a Resolution Granting Acceptance of Public Improvements and Approving Reduction of Faithful Performance Bond for Public Improvements for 260 South Main Street Subdivision at 260 South Main Street by Eastside San Ramon Partners, LLC, and Granting Authorization to the City Engineer to Release the Performance Bond After the One-year Warranty Period (Staff Contact: Steve Erickson, 408-586-3301)**

Recommendation: Adopt a resolution:

a) Granting acceptance of public improvements for 260 South Main Street Subdivision at 260 South Main Street, Tract 10435, Public Improvement Plan No. 2-1233; and
b) Approving a reduction in the faithful performance bond to $16,000, which shall be subject to and in effect for the duration of a one-year warranty period; and
c) Granting authorization to the City Engineer to release the performance bond after the one-year warranty period, without further City Council action provided all required warranty work is completed to his satisfaction.

C9. **Approve and Authorize the City Manager to Execute Amendment No. 1 to the Agreement with Group 4 Architecture, Research & Design for Space Planning and Design of Office Spaces at City Hall and Approve Related Budget Amendment (Staff Contact: Tony Ndah, 408-586-2602)**

Recommendation: Approve and authorize the City Manager to execute Amendment No. 1 to the Agreement with Group 4 Architecture, Research & Design for Space Planning and Design of Office Spaces at City Hall, resulting in a decrease of the total not to exceed amount by $40,000 - from $150,000 to $110,000 - and approve a budget amendment returning the contractual savings to the General Government CIP Fund balance.

C10. Authorize the City Manager to pay the Santa Clara County Cal ID Program FY 2020-21 invoice in an amount not to exceed $126,235 (Staff Contact: Frank Morales, 408-586-2521)

Recommendation: Authorize the City Manager to pay the Santa Clara County Cal ID Program FY 2020-21 invoice in an amount not to exceed $126,235.

C11. Approve a Budget Appropriation in the amount of $96,100 to the Equipment Fund Non departmental FY 2020-21 Operating Budget for the Replacement of Two Police Vehicles (Staff Contact: Jared Hernandez, 408-586-2406)

Recommendation: Approve a budget appropriation in the amount of $96,100 to the Equipment Fund Non-departmental FY 2020-21 operating budget for the replacement of two Police vehicles.

C12. Receive Report on the Status of COVID19 Testing in the City of Milpitas; Direct the City Manager to develop a Memorandum of Understanding with the County of Santa Clara for COVID-19 testing activities retroactive to March 13, 2020 for FEMA reimbursement purposes; Authorize Additional $155,000 to Fund the City's Mobile Testing Unit and the County Fixed Testing Site through December 31, 2020; and Direct the City Manager to explore developing an agreement with the County to establish a City-operated vaccination site when a vaccine becomes available (Staff Contact: Geoffrey Maloon, 408-586-2818)

Recommendations:

a) Receive an update regarding the status of COVID-19 testing in Milpitas.
b) Authorize $155,000 to fund the City's mobile testing unit, the County mobile and pop-up testing sites and the fixed testing site at Milpitas Library through December 31, 2020.
c) Direct the City Manager to develop a Memorandum of Understanding with the County of Santa Clara for COVID-19 testing activities retroactive to March 13, 2020 for FEMA reimbursement purposes.
d) Direct the City Manager to explore developing an agreement with the County to establish a City-operated vaccination site when a vaccine becomes available.

C13. Consider Mayor's Recommendation to Move Up two Current Alternate Members and Appoint One New Alternate Member on the Senior Advisory Commission (Contact: Mayor Tran, 408-586-3029)

Recommendation: Receive Mayor Tran's recommendation, and move to appoint the following:

a) Appoint current Alternate No. 1 Willy Wong as a voting Commissioner to a term that will expire in December of 2022.
b) Move current Alternate No. 2 Nona Tolentino into the Alternate No.1 seat, into a term that will expire in December of 2020.
c) Newly appoint Barbara Jo Navarro as Alternate No. 2 into a term that will expire in December of 2021.

PUBLIC HEARING (7:45 PM)

14. Conduct a Public Hearing and Approve of the List of Energy and Water Conservation Measures and Consider Adoption of a Resolution Authorizing the City Manager to Execute an Amendment to the Energy Services Agreement with Engie Services U.S., Inc. for the Construction of Energy

and Water Conservation Measures in the Amount of $33,983,429 (Staff Contact: Tony Ndah, 408-586-2602)

Recommendations:
a) Open the public hearing, receive any comments and move to close the public hearing.
b) Approve list of Energy and Water Conservation Measures developed for the City.
c) Find that the implementation of the proposed projects is categorically exempt under California Environmental Quality Act Guideline Section 15301.
d) Adopt a resolution authorizing the City Manager to execute a contract with ENGIE Services U.S. for energy and water conservation measures identified in Bundles A, B, and C.1 in the amount of $33,983,429, subject to the City obtaining the necessary financing and appropriation of funds.
e) Authorize the City Manager to execute one or more amendments to the Energy Service Agreement to increase the maximum compensation by an aggregate amount not to exceed $3.3 million.
f) Direct the City Manager to return to City Council for authorization to sell approximately $11.3 million of General Fund Lease Revenue Bonds needed to finance implementation of Bundles B and C.1.

COMMUNITY DEVELOPMENT (8:00 PM)

15. Adopt a Resolution to Endorse the 2020-2025 Santa Clara County Community Plan to End Homelessness (Staff Contact: Sharon Goei, 408-586-3260)

Recommendation: Adopt a resolution to endorse the 2020-2025 Santa Clara County Community Plan to End Homelessness.

LEADERSHIP AND SUPPORT SERVICES (8:30 PM)

16. Receive and Accept General Fund Monthly Financial Status Verbal Report (Staff Contact: Walter C. Rossmann, 408-586-3111)

Recommendation: Accept the September 2020 General Fund Monthly Financial Status verbal report.

17. Adopt a Resolution Establishing the Measure F Oversight Committee Subject to Voter Approval of Measure F (Staff Contact: Walter C. Rossmann, 408-586-3111)

Recommendation: Adopt a resolution establishing the Measure F Oversight Committee and approve the Measure F Oversight Committee structure and responsibilities, subject to voter approval of Measure F (1/4 cent sales tax) on November 3, 2020.

18. Introduce Ordinance No. 23.15 for Updates to Milpitas Municipal Code on Purchasing (Staff Contact: Walter C. Rossmann, 408-586-3111)

Recommendations:
a) Receive presentation from staff.
b) Following the City Attorney reading the title, move to waive the first reading beyond the title of Ordinance No. 23.15.
c) Introduce Ordinance No. 23.15 to update the municipal code section on purchasing.

19. Introduce Ordinance No. 65.150 Regarding Responsible Construction (Staff Contacts: Christopher J. Diaz, 408-586-3040 and Steve McHarris, 408-586-3059)

Recommendation: Following the reading of the title by the City Attorney, move to waive the first reading beyond the title and Introduce Ordinance No. 65.150 adding Chapter 32 (Responsible Construction) to Title III of the Milpitas Municipal Code.

REPORTS OF MAYOR & COUNCILMEMBERS - from assigned Commissions, Committees and Agencies (10:00 PM)

20. 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 and any Council sponsorship.

21. Per Request of Vice Mayor Nuñez, Engage in Discussion on Councilmembers' Ideas to Economically Assist the Milpitas Community During the Pandemic (Contact: Vice Mayor Nuñez , 408-586-3023)

22. 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.

NEXT AGENDA PREVIEW

23. Receive Preview List of Anticipated Items for the Next Regular City Council Meeting Scheduled on October 20, 2020 (Staff Contact: Mary Lavelle, 408-586-3001)

Recommendation: Receive list of anticipated agenda items for the October 20, 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.

From: Chris Martin
Sent: Thursday, September 17, 2020 11:56 PM
To: Christopher Diaz; Carmen Montano; Anthony Phan; Bob Nuñez; Karina Dominguez; Rich Tran; Mary Lavelle; Steven McHarris
Subject: [BULK] Cure and Correct Letter (Brown Act Violation)

Importance: Low

CAUTION - EXTERNAL SENDER.

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Mayor Rich Tran,
Milpitas City Council Members

Dear City Attorney:
Christopher J. Diaz ,

This letter is to call your attention to what I believe was a substantial violation of a central provision of the Ralph M. Brown Act, one which may jeopardize the finality of the action taken by the Milpitas City Council and City Attorney.

The nature of the violation is as follows: In its meeting of 09/15/2020, the Milpitas City Council took action to pull and refuse public comments on an item on the agenda (Item 12, Approve and Adopt a City Social Media Policy) after removing and refusal to read comments , the city Voted by roll call and took formal action on Agenda Item 12, while denying public participation by refusal to acknowledge all submitted public comments.

The action taken was not in compliance with the Brown Act because The Brown Act mandates that agendas for regular meetings allow for two types of public comment periods. The first is a general audience comment period, which is the part of the meeting where the public can comment on any item of interest that is within the subject matter jurisdiction of the local agency. This general audience comment period may come at any time during a meeting (Section 54954.3).

The second type of public comment period is the specific comment period pertaining to items on the agenda. The Brown Act requires the legislative body to allow these specific comment periods on agenda items to occur prior to or during the City Council's consideration of that item (Section 54954.3).

Some public entities accomplish both requirements by placing a general audience comment period at the beginning of the agenda where the public can comment on agenda and non-agenda items. Other public entities provide public comment periods as each item or group of items comes up on the agenda, and then leave the general public comment period to the end of the agenda.

Either method is permissible, though public comment on public hearing items must be taken during the hearing. Caution should also be taken with consent calendars. The body should have a public comment period for consent calendar items before the body acts on the consent calendar, unless it permits members of the audience to "pull" items from the calendar.

The Brown Act allows a body to preclude public comments on an agenda item in one situation, where the item was considered by a committee of the body which held a meeting where public comments on that item were allowed. So, if the body has standing committees (which are required to have agendized and open meetings with an opportunity for the public to comment on items on that committee's agenda) and the committee has previously considered an item, then at the time the item comes before the full body, the body may choose not to take additional public comments on that item. However, if the version presented to the body is different from the version presented to, and considered by, the committee, the public must be given another opportunity to speak on that item at the meeting of the full body (Section 54954.3)

In the event it appears to you that the conduct of the Milpitas City Council specified herein did not amount to the taking of action, I call your attention to Section 54952.6, which defines "action taken" for the purposes of the Act expansively, i.e. as "a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance."

Pursuant to that provision (Government Code Section 54960.1), I demand that the Milpitas City Council cure and correct the illegally taken action as follows: Place Item 12 (Approve and Adopt a City Social Media Policy) back onto the agenda and provide the public the awareness and opportunity to comment of which it was deprived, e.g. the formal and explicit withdrawal from any commitment made, coupled with a disclosure at a subsequent meeting of why individual members of the legislative body took the positions — by vote or otherwise — that they did, accompanied by the full opportunity for informed comment by members of the public at the same meeting, notice of which is properly included on the posted agenda. Informed comment might in certain circumstances include the provision of any and all documents in the possession of the local agency related to the action taken, with copies available to the public on request at the offices of the agency and also at the meeting at which reconsideration of the matter is to occur.

As provided by Section 54960.1, you have 30 days from the receipt of this demand to either cure or correct the challenged action or inform me of your decision not to do so. If you fail to cure or correct as demanded, such inaction may leave me no recourse but to seek a judicial invalidation of the challenged action pursuant to Section 54960.1, in which case I would also ask the court to order you to pay my seek court costs and reasonable attorney fees in this matter, pursuant to Section 54960.5.

Respectfully yours,
Christopher Martin,
Milpitas CA 95035
(Submitted 09/17/2020)

CITY OF MILPITAS

OFFICE OF THE CITY ATTORNEY
TEL: (408) 586-3040 FAX: (408) 586-3056
455 EAST CALAVERAS BOULEVARD, MILPITAS, CA 95035-5479

September 18, 2020

Via email

Chris Martin

RE: Public Comment at City Council Meeting

Dear Mr. Martin:

The City of Milpitas is in receipt of your emails dated September 15th and 16th expressing legal concern that your comment(s) was not read during the public comment portion of Agenda Item 12 regarding the Social Media Policy at the City Council meeting held on September 15, 2020. You expressed concern that you submitted a comment by email and it was not read at the meeting as public comment. You also expressed concern that you submitted a public comment through the online form but it was not read at the meeting as public comment. The City looked into these issues as we value public participation in our public meetings.

With regard your comment submitted by email, on March 17, 2020, California Governor Gavin Newsom issued Executive Order N 29-20 allowing for virtual public meetings under the Brown Act. As part of that Order, the Governor indicated that the agenda that is posted shall "give notice of the means by which members of the public may observe the meeting and offer public comment." The Milpitas City Council meeting agenda for September 15th provided this information in compliance with the Brown Act, as modified by the Governor's Order. As noted on the agenda, the means to offer public comment was through the online form that can be found at http://www.ci.milpitas.ca.gov/publiccomment. There is no reference on the agenda as to e-mailed comments being accepted for public comment.

Further, the City did look into your submission of public comments through the online form on September 15th. Based on the research conducted by the City's Information Technology Director, it appears you submitted comments for a Commission meeting and not the City Council meeting. By submitting comments for a Commission meeting, the City Clerk's office would not have seen your comments as they were only monitoring those comments submitted for the City Council meeting. We have included in the attached PDF the Information Technology Director's research findings, along with the comments you submitted via the online form. Both show that your comments submitted via the online form were submitted for the Library and Education Advisory Commission meeting. As I mentioned previously, if you have screenshots or images showing a different outcome on your end, we would be happy to review.

Finally, the City Council will consider your September 17th email demanding a cure and correct at a future closed session.

We look forward to your participation in a future City Council meeting.

Very truly yours,

CHRISTOPHER J. DIAZ
City Attorney
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035

cc: Steve McHarris, City Manager
Attachment: as cited

We found three comments that were submitted by Mr. Martin on September 15, 2020.

1 comment at 7:29 9/15/2020

1 comment at 11:53 9/15/2020

1 comment at 11:57 9/15/2020

Staff was not able to see these three comments submitted by Mr. Martin since they were sent to an inbox that was not being monitored by staff during the Council meeting.

Mr. Martin used the wrong form to submit public comments during the Council meeting. These comments were submitted into an inbox being used for public comments for our 12 commissions.

Council meeting has its own inbox. This inbox was monitored last night during the meeting. There were 48 public comments that were received and read by the City Clerk Office.

The form clearly states (Meeting Name, Date, Time of Meeting) what meeting it is accepting public comments. In this case, Mr. Martin submitted all three comments to the a form that was used for the Library and Education Commission that took place the night before on 9/14/2020 at 7:00 PM. Below are two screenshots showing the messages in the database and title of the form.

☐	#	Date Created	Date	Name - First	Name - Last
☐	42	14 hours ago	Sep 15, 2020	CHRISTOPHER	MARTIN
☐	41	14 hours ago	Sep 15, 2020	CHRISTOPHER	MARTIN
☐	40	19 hours ago	Sep 15, 2020	CHRISTOPHER	MARTIN

Mike Luu Information Technology Director

Phone: (408) 586-2706 **Email:** mluu@ci.milpitas.ca.gov
1265 N. Milpitas Blvd., Milpitas CA 95035
www.ci.milpitas.ca.gov

aws Solutions Architect

MCSE,MCT,OCP,CCNP

From: machform@ci.milpitas.ca.gov <machform@ci.milpitas.ca.gov> on behalf of Meeting Public Comment <machform@ci.milpitas.ca.gov>
Sent: Tuesday, September 15, 2020 7:29 PM
To: Public Comment <publiccomment@ci.milpitas.ca.gov>
Subject: Public Comments

Thank you for your comments!

Library and Education Advisory Commission Meeting - September 14, 2020 at 7:00 PM

Date	Sep 15, 2020
Name	CHRISTOPHER MARTIN
Address:	The Pines
Agenda Item:	PUBLIC FORUM

Comment
Dear City Council Members, Mayor, City Attorney and City Manager

Public comment on the Agenda Item regarding Social Media.

It does not matter what disclaimer the city publishes; it does not matter what disclaimer individual council members, or the mayor publish. Once an individual engages in open conversations with constituents and the general public, regarding ballot measures, endorsements, campaigning, agenda items, and general city business under the heading of their city title, that individual has transitioned the page from a private page to a Public Forum. A Public Forum that is now subject to the governance of Public Record. (Legal Reference: Knight vs Trump.)

Mayor Tran, with Actual Malice, has used Public Forum to knowingly and purposely post a defamatory, libel, false statement directly about me, while naming me personally in that false statement. He used that false statement to discredit me within the Milpitas community, to damage my reputation, and to instigate fellow Milpitas citizens to rally on his behalf. Because of Mayor Tran's unconscionable behavior and the nature of the statement he has opened me up to harassment and placed not only myself but my family in danger. A family that includes my wife, our small child and my elderly mother-in-law. Specifics of the harassment and threats I have received will be shared with the city attorney in future disclosure proceedings, if needed.

It is sad to see, that once again, inappropriate behavior by our city's leader Mayor Tran may cost this city time and resources that at this moment the city cannot afford.

Also I would like to let Mayor Tran know I will be filing a complaint with the OSC on a separate matter that will reference Hatch Act violations. The Hatch Act forbids members of the Military to include reservists from appearing in uniform on or in publications that promote partisan political elections and or campaigning for partisan Political office. Which Mayor Tran has engaged in on his Public Forum Mayoral Facebook Page by posting pictures of himself in Uniform while posting campaigning events, endorsements and miscellaneous political posts, documents and city business on the same Public Forum Facebook page.

Regards,

Chris Martin

The Pines Milpitas.

From: machform@ci.milpitas.ca.gov <machform@ci.milpitas.ca.gov> on behalf of Meeting Public Comment <machform@ci.milpitas.ca.gov>
Sent: Tuesday, September 15, 2020 11:53 PM
To: Public Comment <publiccomment@ci.milpitas.ca.gov>
Subject: Public Comments

Thank you for your comments!

Library and Education Advisory Commission Meeting - September 14, 2020 at 7:00 PM

Date	Sep 15, 2020
Name	CHRISTOPHER MARTIN
Address:	
Agenda Item:	PUBLIC FORUM

Comment
Read my letter if not its censhorship and. Violation of my 1st amendment

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From: machform@ci.milpitas.ca.gov <machform@ci.milpitas.ca.gov> on behalf of Meeting Public Comment <machform@ci.milpitas.ca.gov>
Sent: Tuesday, September 15, 2020 11:57 PM
To: Public Comment <publiccomment@ci.milpitas.ca.gov>
Subject: Public Comments

Thank you for your comments!

Library and Education Advisory Commission Meeting - September 14, 2020 at 7:00 PM

Date	Sep 15, 2020
Name	CHRISTOPHER MARTIN
Address:	
Agenda Item:	PUBLIC FORUM

Comment
Dear City Council Members, Mayor, City Attorney and City Manager

Public comment on the Agenda Item regarding Social Media.

It does not matter what disclaimer the city publishes; it does not matter what disclaimer individual council members, or the mayor publish. Once an individual engages in open conversations with constituents and the general public, regarding ballot measures, endorsements, campaigning, agenda items, and general city business under the heading of their city title, that individual has transitioned the page from a private page to a Public Forum. A Public Forum that is now subject to the governance of Public Record. (Legal Reference: Knight vs Trump.)

Mayor Tran, with Actual Malice, has used Public Forum to knowingly and purposely post a defamatory, libel, false statement directly about me, while naming me personally in that false statement. He used that false statement to discredit me within the Milpitas community, to damage my reputation, and to instigate fellow Milpitas citizens to rally on his behalf. Because of Mayor Tran's unconscionable behavior and the nature of the statement he has opened me up to harassment and placed not only myself but my family in danger. A family that includes my wife, our small child and my elderly mother-in-law. Specifics of the harassment and threats I have received will be shared with the city attorney in future disclosure proceedings, if needed.

It is sad to see, that once again, inappropriate behavior by our city's leader Mayor Tran may cost this city time and resources that at this moment the city cannot afford.

Also I would like to let Mayor Tran know I will be filing a complaint with the OSC on a separate matter that will reference Hatch Act violations. The Hatch Act forbids members of the Military to include reservists from appearing in uniform on or in publications that promote partisan political elections and or campaigning for partisan Political office. Which Mayor Tran has engaged in on his Public Forum Mayoral Facebook Page by posting pictures of himself in Uniform while posting campaigning events, endorsements and miscellaneous political posts, documents and city business on the same Public Forum Facebook page.

Regards,

Chris Martin

The Pines Milpitas.

NOTICE TO CEASE AND DESIST

Christopher
Martin
Milpitas , California
95035

Date September 2 2020

Re: Defamation of Character – For Libel and/or Slander

Dear Mayor Rich Tran,

Christopher is a respected professional and has spent their life building a positive reputation. Nevertheless, we have been informed that you have been maliciously spreading inaccurate and unfounded information that is damaging to their personal and professional character.

Under the laws in the State of California, it is unlawful for an individual to make deliberate statements that intend to harm the reputation of another party without factual evidence or based on hearsay.

The defamatory statements include, but are not limited to, the following: In your post on facebook on September 1st you said I called you a racist which is an untrue/ false statement that has created undue harassment from individuals that follow your official Mayoral Page that is used to represent City business as well as used to carry the weight of your title as Mayor. I am requesting the post be removed and a retraction be posted.

If you do not cease all related statements a defamation of character lawsuit will be commenced against you.

In addition, this shall serve as a pre-suit letter demanding that you provide us written assurance by September 9 2020 that you will cease and desist from making further factually untrue statements.

If you do not comply with this cease and desist letter by the aforementioned date then a lawsuit may be filed in the proper jurisdiction seeking monetary damages as well as pursuing all available legal remedies for your defamation.

Sincerely,

By Christopher Martin

Mary Lavelle

From: Vince Thayer
Sent: Thursday, September 17, 2020 7:40 PM
To: Christopher Diaz-Contact
Cc: Carmen Montano; Bob Nuñez; Anthony Phan; Karina Dominguez; Mary Lavelle; smharris@ci.milpitas.ca.gov
Subject: Complaint and Legal action
Attachments: IMG-8249.jpg; IMG-8262.PNG; IMG-8252.jpg; IMG-8260.PNG; IMG-8258.PNG; IMG-8259.PNG; IMG-8261.PNG; IMG-8257.PNG

Follow Up Flag: Flag for follow up
Flag Status: Flagged

CAUTION - EXTERNAL SENDER.

I have had a public attack from Mayor Tran on his "Mayor Rich Tran" Facebook page. I tried to offer the mayor a FREE service to do COVID-19 drive through without paying anything and he turned it on social media as if i was trying to sell him something and lied about the actual encounter. I thought be might want this service in Milpitas because i heard he spent lots of money to a lab for the same service Im offering for free. On top of that, i can not comment on his public attack because he blocked and or restricted me from commenting on his "Mayoe Rich Tran" official FB page.

He is restricting my public access to his public page and also to defend myself. He slanders and libels me and can not handle a real debate with me and blocks me from his page. I attached several photos and screenshots of this and i will send all evidence to my attorney.

See attached photos of his public bullying me and my business. And i created a video of me scrolling through his page to show i have ZERO access to defend myself or exercise my first amendment right on a public officials page.

With a loose canyon like this I'm sure this is not his first time doing this and I will show a history of this within my discovery.

Link to my video of my access to his page below
https://share.icloud.com/photos/0O7xb8Mgm8tfc9su3sa0UiY3w

--

Vince Thayer
President and Founder
Test Me 2, LLC.
269-598-1372 Cell Phone
www.TestMe2.org
vince@testme2.org

Mary Lavelle

From: Dennis Grilli
Sent: Friday, September 18, 2020 4:55 PM
To: Steven McHarris; Christopher Diaz-Contact
Cc: Rich Tran; Bob Nuñez; Karina Dominguez; Carmen Montano; Anthony Phan
Subject: Defamation of Character

Follow Up Flag: Follow up
Flag Status: Flagged

CAUTION - EXTERNAL SENDER.

The purpose of this communication is to notify the City of Milpitas of a potential civil action regarding the Defamation of Character as it relates to a citizen of Milpitas, Marsha L. Grilli.
On September 17, 2020 Milpitas Mayor Richard Tran engaged in a text exchange with a local businessman Vince Thayer, who offered the City of Milpitas a free service relating to COVID19 testing. Mayor Tran declined the offer without further explanation. It may have been enlightening to Mr Thayer if Mayor Tran explained that MFD is currently providing that service. Mr Thayer suggested in a following text, apparently believing that the service offered was important to the Milpitas community, indicated that he would approach Mayor Tran's opponent in the upcoming election.
I am aware of this exchange only because Mayor Tran posted the text on his official Mayor Tran Facebook website. Mayor Tran suggested to his followers on his posting that he was being threatened by Mr Thayer.
This irresponsible, vindictive, senseless action resulted in a flurry of hostile, insulting responses on the Facebook page directed at Mr Thayer.
Marsha Grilli, on the Facebook page, suggested to Mayor Tran that allowing these postings on his Facebook page amounted to cyber bullying, and requested that Mayor Tran "just let it go".
Marsha Grilli was immediately attacked by Mayor Tran's followers repeatedly referring to her as a "Karen".
If you are unfamiliar with this reference, it is related to a racially charged incident in New York City. The colloquial reference is defines a "Karen" as a "privileged, self righteous, racist, white woman".
This reference is insulting, demeaning, defaming and without factual basis. This reference is a clear attack on reputation and standing in the Milpitas community that has been well earned during Marsha Grilli's 42 years of loyal service to the Milpitas community as a citizen and 24 years of service as an elected official of the MUSD and Council.
Mayor Tran provided the platform for this defamation through his official Facebook page. Mayor Tran provoked the circumstances under which the attack was made by posting the text communication with Mr Thayer and thereby encouraged the attacks. This irresponsible, vindictive posting resulted in the scurrilous attacks directed at Marsha Grilli
More than one of the attacks included the reference to "Karen". Mayor Tran allowed these attacks to remain on his official Facebook page exposing Marsha Grilli to a continuing period of embarrassment. One of the attacks, which specifically called Marsha Grilli a "Karen" was particularly vulgar and insulting and was subsequently taken down by Facebook.
Mayor Tran, directly to Marsha Grilli, wrote in reference to the comments being posted, "no one is making you follow this Facebook page".
These attacks having been made, Mayor Tran continues to allow them to train on the Facebook page demonstrating a callous, irresponsible posture.
The City of Milpitas is aware of Mayor Tran's official Facebook page and that he uses this platform as an elected official in Milpitas. The City of Milpitas Is complicit in it's use and the ramifications of Mayor Tran's Facebook page.
As Marsha Grilli has been exposed publicly to this defamation, encouraged by Mayor Tran and condoned by the City of Milpitas, I demand a public written apology by Mayor Tran and the City Manager of Milpitas read into the minutes of the next City Council meeting. I believe the Milpitas Council should censure Mayor Tran for this incident.
In the case that this does not occur at the next meeting I will contact our attorney to pursue legal action.
Thank you for your attention.

Dennis Grilli

Sent from my iPad

September 2020

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

Milpitas City Council Calendar
October 2020

November 2020

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

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** **5:00 PM-**Special Arts Commission (CM) **7:00 PM**-Parks, Recreation & Cultural Resources Commission (AP)	**6** **5:30 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** **3:00 PM**-City Council Transportation Subcommittee (RT/CM)	**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**	**17** **Barbara Lee Senior Center Parking Lot** **10 AM -3 PM Pumpkins in the Park Drive-In**
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**

Updated 10/1/2020

Draft CITY OF MILPITAS
MEETING MINUTES

Minutes of: **Regular Meeting of the Milpitas City Council**
Date: **Tuesday, September 15, 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 Rich Tran called the meeting to order at 6:01 PM. Deputy City Clerk Pam Caronongan called the roll. The meeting took place via teleconference/zoom webinar.

PRESENT: Mayor Rich Tran, Vice Mayor Robert "Bob" Nuñez, Councilmembers Karina Dominguez and Anthony Phan

Councilmember Carmen Montano was not present during roll call but arrived during Closed Session.

ABSENT: None

CLOSED SESSION

City Council convened into Closed Session (online webinar) to discuss one labor negotiation item, as listed on the agenda.

At 7:00 PM, the Mayor and Council reconvened for the Open Session.

ANNOUNCEMENT – from Closed Session

City Attorney Christopher Diaz said there was no announcement out of Closed Session. City Attorney Diaz read the Milpitas Code of Conduct. City Council then provided direction to staff on items that will be on upcoming agendas.

PLEDGE

Mayor Tran led the Pledge of Allegiance.

INVOCATION

Mayor Tran conducted the invocation.

PRESENTATION

Mayor Tran proclaimed September 15 - October 15, 2020 as *Hispanic Heritage Month*

PUBLIC FORUM

Deputy City Clerk Caronongan read the following submitted public comment:

1. Vasanthi Vishwanathan
2. Inderjit Mundra
3. Teresa Stevenson
4. Vangie Robilos
5. Urvishkumar Mehta
6. Ha Do
7. Ana Rodriguez
8. Serena Jean
9. Adrian Alvarez
10. Amy Lai-Richardson
11. Lena Chavez
12. Ricardo Iglesia
13. Lupe Fletes
14. Omar Torrico
15. Yuritza RIos
16. Voltaire Montemayor
17. Art Curiel
18. Nicky Bautista
19. Juanita Candelas
20. Luke Walker
21. Francisco Oceano
22. Frank Goldstein

ANNOUNCEMENTS

City Manager Steven McHarris made announcements regarding Milpitas Small Business Spotlight nominations, the 2020 United States Census, and the County's pop-up COVID-19 testing at the Milpitas Sports Center Monday, September 21, 2020.

Councilmember Phan expressed concern about funding youth softball. He requested the City's community engagement and inclusion administrator to open lines of communication between the City and the community, and report back to City Council.

In addition, Councilmember Phan requested staff respond and update City Council regarding the City placing a cap on food delivery service fees. He mentioned that this was a previous request that he made with Mayor Tran. Mayor Tran concurred.

Vice Mayor Nuñez agreed with Councilmember Phan's request pertaining to youth softball.

Vice Mayor Nuñez requested staff consider diversity and inclusion in the formulation of City master plans starting with the Metro TASP Plan. He also asked when the City's recreation facilities will be opened, and how will staff communicate openings to the community.

In addition, Vice Mayor Nuñez mentioned that Santa Clara County has established a countywide homeless task force. He stated he and Councilmember Dominguez have been appointed as the City's representative for the County's homeless task force. He wanted to ensure that the City will not be forgotten in any countywide outreach efforts since he sees this as a way to help the City's homeless, including homeless families with students. He requested staff return with options to address the homeless issues at the October 6 City Council meeting.

Councilmember Dominguez invited the community to a roundtable discussion on Sunday, September 20, 2020 at 6PM along with Vice Mayor Nuñez in preparation for the upcoming County Unhoused Task Force meeting on September 24, 2020.

Councilmember Montano stated that the City Council is exploring solutions with Milpitas Unified School District (MUSD) for the City's youth softball program. She requested everyone's patience as the City works towards a solution.

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 in the last 12 months were reported.

CODE OF CONDUCT

The City Attorney read aloud the City Council Code of Conduct during the Announcements from Closed Session portion of the meeting (see above).

APPROVAL OF AGENDA

Motion: to approve the September 15, 2020 meeting agenda, as presented

Motion/Second: Vice Mayor Nuñez / Councilmember Montano

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

CONSENT CALENDAR

Deputy City Clerk Caronongan announced results of the election for parcel owner/ voter to authorize annexation of parcels into Community Facilities District No. 2008-1: 1 yes and 0 no. This announcement is related to Agenda Item No. C3 – Community Facilities District No. 2008-1 (Annexation No. 10 / 551 Lundy Place development)

Motion: to approve the Consent Calendar which included Agenda Item Nos. C1 through C7

	Motion/Second:	Vice Mayor Nuñez / Mayor Tran
	Motion carried by a vote of:	AYES: 5 NOES: 0
C1. Council Calendar	Received calendars of upcoming meetings for September and October 2020.	
C2. Meeting Minutes	Approved the City Council meeting minutes of the August 27, 2020 Special meeting and the Regular City Council meeting on September 1, 2020.	
C3. Resolution	1) Following receipt of election results from the Deputy City Clerk, adopted Resolution No. 9002 certifying election results and adding Tract No. 10475 to Community Facilities District No. 2008-1 (Annexation No. 19). 2) Approved Final Tract Map No. 10475, including approval of street names and accepted all offers of dedications as stated and depicted on the final map upon completion and acceptance of improvements. 3) Approved and authorized 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. Resolution	Adopted Resolution No. 9003 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 period.	
C5. Settlement Agreements	Authorized the City Manager to execute Release and Settlement Agreements with Valley Water District, Kuskokwim Corporation, and Suulutaaq, Inc. for reimbursement for repairs to Lighting Landscape Maintenance Assessment District (LLMD) No. 98-1 and appropriated $86,125 to Sinclair Horizons LLMD No. 98-1.	
C6. Energy Services Agreement	Approved and authorized the City Manager to execute an Energy Service Agreement with ENGIE Services US Inc. for development of energy and water conservation measures on City facilities and land, per California Government Code §4217.	
C7. YAC Scholarships	Approved the award of five Youth Advisory Commission Community Service Scholarships of $500 each, for a total amount of $2,500.	

COMMUNITY DEVELOPMENT

8. Milpitas Metro Specific Plan

Received report from Planning Director Ned Thomas, Planning Manager Jessica Garner, Transit Area Specific Plan (TASP) Manager Kevin Riley, and consultants Christina Paul from M-Group, Jane Lin from Urban Field Studio, and Teifion Rice-Evans from Economic & Planning Systems (EPS).

Director Thomas introduced the project team, and the consultants presented information about their ongoing work on the Milpitas Metro Specific Plan (TASP Update). The presentation included information gathered from an online survey conducted during August as well as goals and a planning framework for the overall project. The project team responded to questions from individual Council members, and Council members expressed appreciation for the detailed work completed.

The Council directed staff to move forward with the goals and planning framework as presented. Specific direction included a focus on multi-modal transportation, quality parks and recreation facilities, quality of life for residents and visitors, crime prevention, and continuing partnerships with project stakeholders.

No vote was taken for this item.

Deputy City Clerk Caronongan read a public comment from Voltaire Montemayor.

LEADERSHIP

9. Delegates to League Conference

Appointed Councilmember Dominguez as the voting delegate and Vice Mayor Nuñez as the alternate voting delegate to the annual conference League of California Cities scheduled online from October 7 – 9, 2020.

Motion/Second: Mayor Tran / Vice Mayor Nuñez

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

10. Agreements for Cellular Technology

Information Technology Director Mike Luu presented before City Council.

Maureen Cruzen, Ginbar Ketema, Balaji Nagarajan, and Donna Barrett from Verizon as well as Cliff Fitterer, Leon Beauchman, Ellen Kamei, and Tom Shuler from AT&T were all present to respond to inquiries or request for clarification.

City Attorney Andrew McCardle from Best, Best & Krieger (BB&K) was also present to reply to questions coming from City Council

Deputy City Clerk Caronongan read public comments from the following:
1. Robert Jung
2. Allysson McDonald
3. Lisa Moreno
4. Charles Schletzbaum
5. Kelly Clark
6. Voltaire Montemayor

Motion: to 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

Motion/Second: Mayor Tran / Councilmember Phan

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

11. Agreement with County

Assistant City Manager Ashwini Kantak presented her report before the City Council.

Ky Le, Deputy County Executive from the County of Santa Clara, was present to respond to any inquiries or requests for clarification on the County's behalf.

Motion**:** to 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.

Deputy City Clerk Caronongan read public comments from the following:
1. Voltaire Montemayor
2. Urvishkumar Mehta
3. Kelly Clark

Motion/Second: Mayor Tran / Vice Mayor Nuñez

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

12. Social Media Policy

Assistant City Manager Kantak introduced Management Fellow Ahmad Raza and City Attorney Isaac Rosen from BB&K who have presented the item before City Council.

Deputy City Clerk Caronongan read public comments from the following:
1. Voltaire Montemayor
2. Urvishkumar Mehta
3. T. Fontenot

Motion: to approve and adopt a new City of Milpitas Social Media Policy

Motion/Second: Mayor Tran / Vice Mayor Nuñez

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

REPORTS

13. List of Agenda Items

City Council received the list of agenda items from staff.

14. Request - US Census, and City Sponsored Events

Consensus made to move this Agenda Item to the next City Council meeting on October 6, 2020.

NEXT AGENDA PREVIEW

15. Agenda Preview

Received list of anticipated agenda Items for the next regular City Council meeting on October 6, 2020.

ADJOURNMENT

City Council adjourned the meeting at 12:07 PM in memory of Heide Wolf-Reed, who was an active member of the Milpitas business community.

Draft meeting minutes submitted by
Deputy City Clerk Pam Caronongan

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Adopt a Resolution Accepting and Authorizing the City Manager to Execute the Agreement to Accept the 2019 State Homeland Security Grant Program Funding and Approving and Authorizing a Sole Source Purchase for Procurement of Mobile Crash Barriers and Portable Bollards Manufactured by Delta Scientific Corporation; and Approve Budget Appropriation to the Police Department's FY 2020-21 operating budget**
Category:	Consent Calendar-Public Safety
Meeting Date:	10/6/2020
Staff Contact:	**John Torrez, Milpitas Police Captain, 408-586-2408**
Recommendation:	Adopt a Resolution accepting and authorizing the City Manager to execute the Agreement to accept the 2019 State Homeland Security Grant Program Funding and approving and authorizing a sole source purchase for procurement of Mobile Crash Barriers and Portable Bollards Manufactured by Delta Scientific Corporation; and approve a budget appropriation into the Police Department's FY 2020-21 operating budget.

Background:

The U.S. Department of Homeland Security (DHS)/Federal Emergency Management Agency's (FEMA) Homeland Security Grant Program provides funding to federal, state and local governments for the purpose of strengthening national security in the ability to prevent, respond to, and recover from major events such as terrorist attacks. This grant program is comprised of three sub-programs, including the State Homeland Security Program.

California's State Homeland Security Grant Program (SHSGP) is administered by the California Governor's Office of Emergency Services (CalOES). The grant funding must be used to supplement existing funds and may not be used to supplant funds that have been appropriated for the same purpose. CalOES prioritized use of the FY 2019 SHSGP funds into homeland security strategy goals including the prevention of violent extremism through multi-jurisdictional collaboration and coordination.

On September 1, 2019, Cal OES awarded the County of Santa Clara 2019 SHSGP funds in the amount of $2,088,075. The County distributes SHSGP funds to cities, special districts, and other entities within the County. The Milpitas Police Department, in coordination with four other jurisdictions in Santa Clara County, applied for the FY 2019 SHSGP for a regional project to purchase portable security equipment for public events (equipment to be shared regionally, as needed). Subsequently, the applications for the regional project were approved. In January of 2020, the Milpitas Police Department was awarded $102,000 in reimbursement grant funds, only to be utilized for the purchase of approved portable security equipment, as outlined below.

The grant award and proposed purchase are presented to Council as required by City of Milpitas SOP 26-2a and 30-5.1, respectively.

Analysis:

The acceptance of the FY 2019 SHSGP fund award is contingent upon purchasing interoperable mobile crash barriers and portable bollards with those purchased by four other neighboring law enforcement agencies in Santa Clara County. The sole source purchase of two MP5000 mobile crash barrier systems and five TB100 portable bollards from vendor Delta Scientific Corporation with the FY 2019 SHSGP funds will 1) be eligible f

FY 2019 SHSGP reimbursement in total, 2) align with the equipment purchased by neighboring law enforcement agencies for shared use, and 3) enhance public safety. Campbell, Los Gatos-Monte Sereno, Milpitas, Morgan Hill and Santa Clara Police Departments were awarded funds for the same project to purchase the same barriers/bollards. Of the participating agencies, Morgan Hill has already taken delivery of the Delta Scientific Corporation equipment.

The MP5000 system is crash tested to stop a 15,000-pound vehicle traveling 40 miles per hour yet is easily operated for accessibility of emergency vehicles, for example. The TB100 portable bollards are crash tested as a set of 5 to stop a 15,000-pound vehicle traveling 30 miles per hour. They can be placed to further secure a large area not fully protected by the 16-foot MP5000. The MP5000 mobile crash barriers in conjunction with five TB100 portable bollards is the only barricade system that carries this American Standard Test Method (ASTM) M50 rating.

Santa Clara County routinely hosts high-profile events, some of which are Special Event Assessment Rating (SEAR) Level 1 events, requiring extensive security measures. In addition, the City of Milpitas routinely hosts large scale City-sponsored and community events such as the annual Fourth of July fireworks event. With the global increase in terror related incidents involving vehicle borne assaults and mass casualties, the MP5000 mobile crash barrier system and TB100 portable bollards are needed around the City and County to provide public protection at community and high-profile events. We expect these highly visible security devices to assist in the prevention and deterrence of vehicle assaults, thus safeguarding our community. A quotation for the equipment is provided, totaling $101,995.30 (Attachment 2).

Policy Alternative:

Alternative: Do not adopt a resolution, and thus refuse the 2019 State Homeland Security Grant Program award in the amount of $102,000 and do not authorize the purchase of approved equipment.

Pros: There are no identified benefits to this alternative.
Cons: The police department would not have the opportunity to purchase needed equipment or City general funds would be required to purchase the equipment.

Reason not recommended: The FY 2019 State Homeland Security Grant Program award does not require matching funds nor are there any requirements that result in a negative impact. The City will be reimbursed for the total amount of the proposed equipment purchase.

Fiscal Impact:
There is sufficient funding in the FY 2019 SHSGP award to purchase the approved equipment; we do not anticipate unexpected spending beyond the grant allocation. A budget amendment to appropriate $102,000 to the Police Department's FY 2020-21 operating budget is needed (Attachment 4).

California Environmental Quality Act
Not applicable.

Recommendations:
1) Adopt a resolution accepting and authorizing the City Manager to execute the Agreement to accept the 2019 State Homeland Security Grant Program Funding, and approving and authorizing a sole source purchase for procurement of Mobile Crash Barriers and Portable Bollards Manufactured by Delta Scientific Corporation.
2) Approve a budget appropriation of $102,000 into the Police Department's FY 2020-21 operating budget.

Attachments:
1. Resolution
2. Delta Scientific Corporation quote
3. Photo of MP5000 Mobile Crash Barrier and TB100 Portable Bollard set-up
4. Budget change form
5. Agreement with Santa Clara County
6. California OES Assurances for Federal Grant Program

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS ACCEPTING AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT BETWEEN THE COUNTY OF SANTA CLARA AND THE CITY OF MILPITAS GRANTING PROGRAM FUNDS FOR THE 2019 STATE HOMELAND SECURITY GRANT PROGRAM , AND APPROVING AND AUTHORIZING A SOLE SOURCE PURCHASE FOR THE PROCUREMENT OF MOBILE CRASH BARRIERS AND PORTABLE BOLLARDS MANUFACTURED BY DELTA SCIENTIFIC CORPORATION TO BE FUNDED BY FY 2019 STATE HOMELAND SECURITY GRANT PROGRAM FUNDING

WHEREAS, the U.S. Department of Homeland Security (DHS)/Federal Emergency Management Agency's (FEMA) Homeland Security Grant Program provides funding to federal, state and local governments for the purpose of strengthening national security in the ability to prevent, respond to, and recover from major events such as terrorist attacks; and

WHEREAS, California receives DHS funding through its State Homeland Security Grant Program (SHSGP), which is administered by the California Governor's Office of Emergency Services (Cal OES). Cal OES prioritized use of the FY 2019 SHSGP funds into 11 homeland security strategy goals including the prevention of violent extremism through multi-jurisdictional collaboration and coordination; and

WHEREAS, on September 1, 2019, Cal OES awarded the County of Santa Clara 2019 SHSGP funds in the amount of $2,088,075. The allocation of the SHSGP funds were determined by the County Approval Authority in accordance with the grant guidelines; and

WHEREAS, the City of Milpitas has been awarded funding, and the acceptance of the FY 2019 SHSGP fund award is contingent upon purchasing interoperable mobile crash barriers and portable bollards compatible with those purchased by four other neighboring law enforcement agencies in Santa Clara County including Campbell, Los Gatos-Monte Sereno, Morgan Hill and Santa Clara, as provided for under the Agreement Between the County of Santa Clara and the City of Milpitas Granting Program Funds for the 2019 State Homeland Security Grant Program (the "Agreement"), attached hereto as **Exhibit A**; and

WHEREAS, the City of Milpitas Police Department has been approved for a grant of $102,000.00 to cover the cost of two mobile crash barriers and five portable bollards for a collaborative, regional project. SHSGP funding does not augment the General Fund budget; nor is there any obligation on the part of the City for matching funds. The cost to purchase the equipment will be fully funded through the FY 2019 SHSGP grant. The equipment procured will be shared on a regional basis and therefore must be interoperable with the equipment procured by the aforementioned police agencies in the County; and

WHEREAS, Delta Scientific Corporation is the sole manufacturer of the MP5000 mobile crash barrier and is the only portable barricade system of its type that is completely removed from its transportation device before being deployed. In conjunction with five TB100 portable bollards, it is the only barricade system that carries an American Standard Test Method (ASTM) M50 rating; and

WHEREAS, after conducting a good faith review of the available sources and pursuant to Milpitas Municipal Code Section I-2-3.09 (Sole Source Procurement), the City's Purchasing Agent has determined that Delta Scientific Corporation is the only source for the purchase of the MP5000 mobile crash barrier and TB100 portable bollard system.

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

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

2. The City Manager, or his designee, is hereby authorized to execute, deliver, and perform the Agreement Between the County of Santa Clara and the City of Milpitas Granting Program Funds for the 2019 Homeland Security Grant Program Funds, attached hereto as **Exhibit A**, and to accept the grant funds distributed to the City of Milpitas pursuant to the Agreement.

3. The City Council hereby approves Delta Scientific Corporation as the sole source provider for the procurement of two MP5000 mobile surface mounted barrier systems and five TB100 portable bollards from Delta Scientific Corporation per quotation JA0509195R2 pursuant to Milpitas Municipal Code Section I-2-3.09 (Sole Source Procurement).

4. The City Council hereby approves the purchase of the equipment from Delta Scientific Corporation and authorizes the City Manager, or his designee, to execute the contract and related documents for the purchase in the amount of $101,995.30.

PASSED AND ADOPTED this _____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Rich Tran, Mayor

APPROVED AS TO FORM:

_____
Christopher J. Diaz, City Attorney

DELTA
SCIENTIFIC CORPORATION

40355 Delta Lane
Palmdale, CA 93551 USA
Phone:(661) 575-1100
Fax: (661) 575-1110

MILPITAS

MP5000 MOBILE CRASH BARRIER

Quote #: JA0509195R2

MP5000 HYDRAULICALLY OPERATED *MOBILE* SURFACE MOUNTED BARRIER SYSTEM

TESTED IN ACCORDANCE WITH ASTM F 2656-07 M40 STANDARDS
TESTED AT KARCO ENGINEERING IN ADELANTO, CALIFORNIA

2	MP5000	BASIC STRUCTURE, -16 FT. (STANDARD) CLEAR OPENING	**64,230.00**
2	H8050	BATTERY OPERATED HYDRAULIC PUMP / W CONTROL STATION	**11,295.94**
2	MP5000TA	BARRIER TRAILER ASSEMBLY - INCLUDES SPARE TIRE, UTILITY BOX, AND VIN NUMBER	**6,541.26**

BASIC SYSTEM CONSISTS OF:

* QUICK DEPLOYMENT MOBILE BARRIER ASSEMBLY
* HINGED, RIGID CRASH PLATE ASSEMBLY
* TRAILER HITCH ASSEMBLY
* STANDARD WHITE/YELLOW OR BLACK/YELLOW PAINT (OPTIONS AVAILABLE)
* COMPLETE INSTRUCTIONS, START UP AND TROUBLE-SHOOTING MANUAL

MP5000 SYSTEM OPTIONS: (NOT INCLUDED WITH BASIC SYSTEM)

2	MPL-4050	REMOTE OPEN/CLOSE PUSH BUTTON STATION W/20' CABLE	$	284.10	**$**	**568.20**
0	MPL-4050-300	ADDITIONAL MPL4050 CABLE---300FT OF TOTAL CABLE	$	675.00	**$**	**-**
0	POWER CABLE	POWER CORD (300 FT) / SOW 14/3 BLACK NEOPRENE CONNECTORS ARE: 71435K41 PLUG / 509-2016 CONNECTOR MATE	$	875.00	**$**	**-**
2	B2010	BARRICADE FULLY DOWN AUXILIARY LIMIT SWITCH	$	216.00	**$**	**432.00**
0	B1154	BOOSTER PAK 12VDC	$	399.00	**$**	**-**
2	90590-2	SIGNAL LIGHT MODULE	$	-	**$**	**-**
2	MPL-10	STOP GO SIGNAL LIGHT(S) (EXTERNAL POWER REQUIRED)	$	791.47	**$**	**1,582.94**
2	MPL-20W	48" TALL TRAFFIC LIGHT MOUNTING POST WITH 24" SQ BASE	$	185.99	**$**	**371.98**
0	SOLAR1	PEDESTAL MOUNTED SOLAR PANEL ASSEMBLY.	$	1,752.00	**$**	**-**
0	MPL-20W	48" TALL SOLAR MOUNTING POST WITH 24" SQUARE BASE	$	185.99	**$**	**-**
0	GALVAN	GALVANIZE MOBILE BARRIER	$	4,195.00	**$**	**-**
2	CAB KIT	CABLE KIT (JUMPER CABLE, UTILITY OUTLET CONNECTION)	$	296.00	**$**	**592.00**
2	MP5K-TT1	BARRIER TURN TABLE	$	481.56	**$**	**963.12**
5	TB100-1	PORTABLE BOLLARD EXTENDS BARRIER PROTECTION ZONE	$	3,150.00	**$**	**15,750.00**
0	EXP	EXPORT PREPARATION/BARRIER	$	1,518.15	**$**	**-**
0	EXWA1	EXWARR ONE YEAR EXTENDED WARRANTY PER DELTA SCIENTIFIC'S EXISTING WARRANTY POLICY	$	-	**$**	**-**
0	EXWA2	EXWARR TWO YEAR EXTENDED WARRANTY PER DELTA SCIENTIFIC'S EXISTING WARRANTY POLICY	$	-	**$**	**-**
0		PREVENTIVE MAINTENANCE AGREEMENTS AVAILABLE, CONTACT OFFICE				

** ALL EQUIPMENT IS FOB FACTORY*

TOTAL EQUIPMENT COST		**$**	**102,327.44**
DISCOUNT		*$*	*(12,240.00)*
SALES TAX	9.00%	**$**	**8,107.86**
Freight (if applicable)		*$*	*3,800.00*
GRAND TOTAL (Quote is valid 180 days from 07/13/20)		**$**	**101,995.30**

7/13/2020

STOP

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From*		To*	
	Account	Amount	Account	Amount
Check one: ☒ **Budget Appropriation** ☐ **Budget Transfer**	**267-3557**	**$101,995.30**	**267-7214851** **267-7214223**	**$86,294.85** **$15,700.45**

Accept the 2019 State Homeland Security Grant Program award in the amount of $102,000; Approve a budget appropriation in the amount of $101,995.30 to the Police Department's FY 2020-21 operating budget; and Adopt a resolution authorizing the sole source purchase of two MP5000 mobile surface mounted barrier systems and five TB100 portable bollards from Delta Scientific Corporation

Background:

The U.S. Department of Homeland Security (DHS)/Federal Emergency Management Agency's (FEMA) Homeland Security Grant Program provides funding to federal, state and local governments for the purpose of strengthening national security in the ability to prevent, respond to, and recover from major events such as terrorist attacks. This grant program is comprised of three sub-programs, including the State Homeland Security Program.

California's State Homeland Security Grant Program (SHSGP) is administered by the California Governor's Office of Emergency Services (CalOES). The grant funding must be used to supplement existing funds and may not be used to supplant funds that have been appropriated for the same purpose. CalOES prioritized use of the FY 2019 SHSGP funds into 10 homeland security strategy goals including the prevention of violent acts through multi-jurisdictional collaboration and coordination.

The Milpitas Police Department, in coordination with four other jurisdictions in Santa Clara County, applied for the FY 2019 SHSGP for a regional project to purchase portable security equipment for public events (equipment to be shared regionally, as needed). Subsequently, the applications for the regional project were approved. In January of 2020, the Milpitas Police Department was awarded $102,000 in reimbursement grant funds, only to be utilized for the purchase of approved portable security equipment, as outlined below.

The grant award and proposed purchase are presented to Council as required by City of Milpitas SOP 26-2a and 30-5.1, respectively.

Analysis:

The acceptance of the FY 2019 SHSGP fund award is contingent upon purchasing interoperable mobile crash barriers and portable bollards with those purchased by four other neighboring law enforcement agencies in Santa Clara County. The sole source purchase of two MP5000 mobile crash barrier systems and five TB100 portable bollards from vendor Delta Scientific Corporation with the FY 2019 SHSGP funds will 1) be eligible for FY 2019 SHSGP reimbursement in total, 2) align with the equipment purchased by neighboring law enforcement agencies for shared use, and 3) enhance public safety. Campbell, Los Gatos Monte Sereno, Milpitas, Morgan Hill and Santa Clara Police Departments were awarded funds for the same project to purchase the same barriers/bollards. Of the participating agencies, Morgan Hill has already taken delivery of the Delta Scientific Corporation equipment.

The MP5000 system is crash tested to stop a 15,000-pound vehicle traveling 40 miles per hour yet is easily operated for accessibility of emergency vehicles, for example. The TB100 portable bollards are crash tested as a set of 5 to stop a 15,000-pound vehicle traveling 30 miles per hour. They can be placed to

further secure a large area not fully protected by the 16-foot MP5000. The MP5000 mobile crash barriers in conjunction with five TB100 portable bollards is the only barricade system that carries this American Standard Test Method (ASTM) M50 rating.
Santa Clara County routinely hosts high-profile events, some of which are Special Event Assessment Rating (SEAR) Level 1 events, requiring extensive security measures. In addition, the City of Milpitas routinely hosts large scale City-sponsored and community events such as the annual Fourth of July fireworks event. With the global increase in violent incidents involving vehicle borne assaults and mass casualties, the MP5000 mobile crash barrier system and TB100 portable bollards are needed around the City and County to provide public protection at community and high-profile events. We expect these highly visible security devices to assist in the prevention and deterrence of vehicle assaults, thus safeguarding our community. A quotation for the equipment is attached, totaling $101,995.30 (Attachment 2).

Policy Alternatives:

Alternative 1: Refuse the 2019 State Homeland Security Grant Program award in the amount of $102,000 and do not authorize the purchase of approved equipment.
Pros: There are no identified benefits to this alternative.
Cons: The police department would not have the opportunity to purchase needed equipment or City general funds would be required to purchase the equipment.
Reason not recommended: The FY 2019 State Homeland Security Grant Program award does not require matching funds nor are there any requirements that result in a negative impact. The City will be reimbursed for the total amount of the proposed equipment purchase.

Fiscal Impact:
There is sufficient funding in the FY 2019 SHSGP award to purchase the approved equipment; we do not anticipate unexpected spending beyond the grant allocation. A budget amendment to appropriate $102,000 to the Police Department's FY 20-21 Operating Budget is needed (Attachment 5).

California Environmental Quality Act: N/A

Recommendation:
1.) Accept the 2019 State Homeland Security Grant Program award in the amount of $102,000;
2.) Approve a budget appropriation in the amount of $101,995.30 to the Police Department's FY 2020-21 operating budget; and
3.) Adopt a resolution authorizing the sole source purchase of two MP5000 mobile surface mounted barrier systems and five TB100 portable bollards from Delta Scientific Corporation per quotation JA0509195R2 (Attachment 2).

Attachments:
1. Resolution
2. Delta Scientific Corporation quotation JA0509195R2
3. Photo of MP5000 Mobile Crash Barrier and TB100 Portable Bollard set-up
4. Budget change form

☐ **Check if City Council Approval required.** **Meeting Date**: September 15, 2020

Requested by:	**Department Head:** Armando Corpuz	**Date:** September 15, 2020
Reviewed by:	**Finance Director:** Walter C. Rossmann	**Date:** September 15, 2020

Date approved by City Council, if required: **Confirmed by:**

AGREEMENT BETWEEN THE COUNTY OF SANTA CLARA AND THE CITY OF MILPITAS GRANTING PROGRAM FUNDS FOR THE 2019 STATE HOMELAND SECURITY GRANT PROGRAM FUNDS

THIS AGREEMENT is made effective when fully executed by the County of Santa Clara ("County") and the City of Milpitas ("Milpitas") for the allocation and distribution of 2019 State Homeland Security Grant Program (SHSGP) funds.

RECITALS

WHEREAS, the 2019 SHSGP (CFDA #97.067) supports the implementation of State Homeland Security Strategies to address the identified planning, organization, equipment, training and exercise needs for acts of terrorism and other catastrophic events, and management and administration of the grant. In addition, SHSGP supports the implementation of the National Preparedness Guidelines, the National Incident Management System (NIMS), and the National Response Network (NRF);

WHEREAS, the State of California ("State") has designated the County as the Operational Area for purposes of distributing SHSGP funds to the cities, special districts and other entities within the County. An Anti-Terrorism Approval Body (County Approval Authority), comprised of one County Public Health Officer, County Fire Chief, Municipal Fire Chief, County Sheriff, and Chief of Police, has been appointed for the purpose of approving the distribution of SHSGP funds at the Operational Area level;

WHEREAS, on September 1, 2019 the California Office of Emergency Services ("Cal OES") awarded the County 2019 SHSGP funds in the amount of $2,088,075. The allocation of the SHSGP funds will be determined by the County Approval Authority in accordance with the grant guidelines.

NOW, THEREFORE, the County and Milpitas agree as follows:

THE AGREEMENT

Article I. Definitions

1. Specific Terms

(a) **"Burdened Labor Rate"** shall mean the labor rate including benefits, taxes and other deductions from an employee's paycheck. This rate does not include vacation benefits.

(b) **"Milpitas"** shall mean the City of Milpitas, its officers, board members, employees, and agents.

(c) **"County"** shall mean the County of Santa Clara, its officers, board members, employees, and agents.

(d) **"SHSGP funds"** or **"SHSGP funding"** shall mean the funding Milpitas receives under this Agreement.

(e) **"Federal Program Guidance"** shall mean guidance documents issued by the Federal Emergency Management Agency, including the SHSGP Program Funding Opportunity Announcement, for Fiscal Year 2019.

(f) **"Grant Certifications and Assurances"** shall mean the FY19 SHSGP Agreement Articles, Assurances, Certifications, Terms, and Conditions

(g) **"Highly Compensated Individual"** shall mean an individual whose income is $300,000 or more per year.

(h) **"Prime Recipient"** shall refer to County.

(i) **"State Guidance"** shall mean the California Supplement to the Federal Program Funding Opportunity Announcement, issued by Cal OES for Fiscal Year 2019.

(j) **"Sub-Recipient"** shall refer to Milpitas.

2. References to This Agreement

Any reference to this Agreement shall include: (a) the Agreement; (b) all exhibits, appendices, schedules, and attachments to this Agreement; (c) all statutes, ordinances, regulations, rules, or other documents incorporated by reference into this Agreement; (d) all amendments, modifications, or supplements to this Agreement.

Article II. Payment

1. Payment Eligibility

Unless otherwise approved in advance by the County Office of Emergency Management (OEM) Grants Administrator (hereinafter "grants administrator"), only an actual cash disbursement by Milpitas for a claimed expense shall be eligible for reimbursement by the County as approved and specified in Exhibit A, SHSGP Project Funding, which is attached and hereby incorporated into this Agreement.

2. Amount of Payment

The County will provide Milpitas, unless otherwise specified, with the equipment, supplies, and/or other resources as set forth in Exhibit A, SHSGP Project Funding. Specifications for such equipment shall be provided by Milpitas's requesting agency to the County for the appropriate procurement process. Milpitas's requesting agency will be notified when the procurement process is complete for final approval of equipment prior to the order being placed. If, through previous agreement with the County, Milpitas is to procure its own equipment, performance milestone dates will apply (refer to Article IV, Section 3(b)).

The County may reallocate SHSGP funds as specified in Article II, section 4 of this Agreement. County

does not guarantee a minimum payment to Milpitas.

Funds in the amount of $228,244 have been set aside for the training and exercise programs from the SHSGP grant to be allocated during the term of this Agreement. OEM will allocate training and exercise funds to agencies as determined by the Training/Exercise Advisory Group.

Authorized personnel budgets are allowable within the County OEM, Central Fire, and County Emergency Medical Services. The personnel budget for these departments will reflect the expenditure authority. Reimbursement for actual cash disbursements will be requested through the County OEM. Based on the preference of the Department/Agency, reimbursement requests may be requested on a monthly or quarterly basis. For County Departments, reimbursements will be made via inter-county transfer. For all others, a County warrant will be issued.

3. Maximum Amount Payable

Subject to the availability of funds and the priorities established by the County Approval Authority, the maximum amount of SHSGP funds payable by the County to Milpitas under this Agreement must not exceed $102,000, as allocated by the County Approval Authority.

4. Reallocation of SHSGP Grant Funds

For the purpose of maximizing the resources available for preparedness for acts of terrorism and other catastrophic events within the Operational Area, Milpitas agrees that the County Approval Authority may reallocate funds under this Agreement to Milpitas or to another applicant if the County determines that Milpitas is unable to utilize the amount allocated under this Agreement. The County may base its determination on factors that include but are not limited to the following: delivery timelines, fund expenditure capabilities, and timeliness of expenditure. The County will notify Milpitas in writing of any determination to reallocate funds, by issuing a "Notice of Reallocation." SHSGP funds will be put forth to the County Approval Authority for reallocation. Milpitas agrees that the County has the authority to increase or decrease the maximum amount payable under this Agreement as specified in the Notice of Reallocation document without liability and the County has the authority to amend Exhibit A, "SHSGP Project Funding," accordingly. Upon issuance, the Notice of Reallocation will automatically become part of this Agreement.

Article III. Requests for Reimbursement and Reimbursements

1. Required Documentation for Reimbursement

The SHSGP is a reimbursement grant under which Cal OES disburses reimbursement funds to County, and County disburses reimbursement funds to Milpitas. No cash advances are permitted under the SHSGP program.

(a) Requests for Equipment

The following documentation is required for all reimbursement requests for equipment:

- Quote or solicitation documents

- Summary of pricing and chosen vendor
- Documentation that vendor is not on the excluded parties list (https://www.epls.gov/) (a print-out of the search result page will suffice)
- Purchase order and/or contract
- Receiving documentation/packing slip
- Invoice
- Proof of payment

All equipment must be approved by the County Approval Authority and must be authorized per the web-based Authorized Equipment List on the Responder Knowledge Base, which is sponsored by Grants & Training and the National Memorial Institute for the Prevention of Terrorism at https://www.rkb.us/. (Contact the Grant Manager for a current Authorized Equipment List.)

(b) Subcontracts

If Milpitas awards subcontracts totaling $25,000 or more, it must report on any such subcontracts and on Highly Compensated Individuals on the Financial Disclosure Form, Exhibit D, within 30 days of the award. The following information must be included in Milpitas's report on any sub-award exceeding $25,000:

- Name of entity receiving award;
- Amount of award;
- Funding agency;
- Catalog of Federal Domestic Assistance program number;
- Award title (descriptive of the purpose of the funding action);
- Location of the receiving entity and primary location of performance including city, state, and federal Congressional district;
- Dun & Bradstreet (D&B) DUNS Number of the receiving entity, and of its parent if applicable; and
- Total compensation and names of receiving entity's five most highly compensated executives if:
    - In the preceding fiscal year, the subcontractor received 80 percent or more, and $25,000,000 or more, of its gross annual revenue from federal procurement contracts or subcontracts or from federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.230; and
    - The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m(a), 78o(d), or under section 6104 of the Internal Revenue Code of 1986.
    - Milpitas must report subcontractor executive compensation by the end of the month following the month in which it makes the sub-award. For example, if the sub-award is obligated in any date in April 2020, Milpitas must report any required compensation information by May 31, 2020.

Classified information that, in the interest of national security, requires protection against

unauthorized disclosure (i.e., information deemed Top Secret, Secret, or Confidential under Executive Order 12958) is exempt from the Prime and Sub-Recipient reporting requirements, as are contracts with individuals.

(c) Sole Source Contracts

Sole source contracts of $250,000 or more are not allowable under the SHSGP program unless first approved by Cal OES. Milpitas must obtain sole source request documentation and submit it to the Grants Manager of County's OEM. Upon Milpitas's completion and submission of the required sole source documentation, County's Grants Manager shall forward all sole source documents to the appropriate Cal OES contact for review and approval. Only after Cal OES approval is given can a sole source procurement be completed and expenditures reimbursed using SHSGP allocated funds. Sole source requests below the $250,000 threshold must follow Milpitas's own procurement policies.

(d) Other Requests

The following documentation is required for all reimbursement requests for contractors:

- Quote or solicitation documents
- Executive summary of how contractor was chosen
- Documentation that vendor is not on the excluded parties list (https://www.sam.gov/) (a print-out of the search result page will suffice)
- Purchase order and/or contract
- Invoice showing deliverables and milestones completed
- Proof of payment
- Financial Disclosure Form (Exhibit D) if awarded contract exceeds $25,000

The following documentation is required for reimbursement of Salaries:

- Functional timesheet
- Description of scope of job which includes Homeland Security-related functions
- Burdened Labor Rate
- Payroll reports showing amount paid for each pay period being claimed

The following documentation is required for reimbursement for Training activities:

- Class syllabus
- Class sign-in sheet
- Instructor/consultant contract documents
- Instructor's invoice
- Proof of payment

2. Submission of Requests for Reimbursement

(a) Milpitas shall submit reimbursement requests to County's OEM on a quarterly basis. Unless pre-approved by County's OEM Director or designee, all reimbursement requests shall be

due fifteen calendar days after the end of the quarter, with the exception of the final expenditure and/or invoice, as indicated below. Any expenditure during the final period identified in the chart below shall be made by April 15, 2022, and any related invoice shall be submitted by April 30, 2022, unless otherwise pre-approved by County's OEM Director or designee, in order to meet 2019 SHSGP deadlines.

(b) During the term of this Agreement, County is not obligated to honor any request for reimbursement that is submitted after April 30, 2022.

Article IV. Use of Funds

1. Master Grant Obligations

(a) Milpitas shall comply with the SHSGP Federal Program Guidance, the State Guidance, and the Grant Certifications and Assurances, attached as Exhibit B. Milpitas shall require any sub-grantee, contractor, or other entity receiving SHSGP funds through or from Milpitas to execute a copy of the Grant Certifications and Assurances, and shall be responsible for ensuring that sub-grantee, contractor, or other entity complies with the Grant Certifications and Assurances.

(b) Milpitas shall comply with all other applicable statutes, regulations, executive orders, requirements, policies, guides, guidelines, information bulletins, Cal OES grant management memos, and instructions; the terms and conditions of the grant award; and any other conditions imposed by Cal OES or by this Agreement, provided that if any provisions of this Agreement conflict with any State requirements, the State requirements will control. Milpitas shall ensure that any sub-grantee, contractor, or other entity receiving SHSGP funds through or from Milpitas complies with all applicable statutes, regulations, executive orders, requirements, policies, guides, guidelines, information bulletins, Cal OES grant management memos, and instructions; the terms and conditions of the grant award; and any other conditions imposed by Cal OES or by this Agreement.

(c) Milpitas shall establish and maintain administrative, programmatic and fiscal management records in accordance with federal and state requirements, and:

i. Maintain financial management systems that support grant activities in accordance with federal and state requirements, including but not limited to requirements in 44 Code of Federal Regulations ("C.F.R.") Part 13.20, and the Office of Justice Programs Financial and Administrative Guide for Grants, Part II, Chapter 3.
ii. The County shall provide and affix equipment tracking numbers for all equipment purchased through its procurement process. Using the County-issued tracking number, Milpitas shall maintain an equipment tracking ledger that tracks the equipment within Milpitas and complies with federal and state requirements, including but not limited to requirements in 44 C.F.R., Parts 13.32 and 13.33, and the Office of Justice Programs Financial and Administrative Guide for Grants, Part III, Chapter 6.

(d) By executing this Agreement, Milpitas certifies that it is not debarred, suspended, or

otherwise ineligible to receive SHSGP funds. In addition, Milpitas shall ensure and independently verify that any sub-grantee, contractor, or other entity receiving SHSGP funds through or from Milpitas complies with federal and state requirements, including but not limited to requirements in 44 C.F.R., Parts 13.32 and 13.33, and the Office of Justice Programs Financial and Administrative Guide for Grants, Part III, Chapter 6, and is not debarred, suspended, or otherwise excluded from participation in the SHSGP program. Milpitas shall maintain documentary proof of this verification in its files.

2. Scope of Services

(a) If Milpitas has been allocated funding for a project, Exhibit A, "SHSGP Project Funding," will serve as the basis for the project. A further detailed description may be necessary and will be requested by the County if needed to be incorporated by reference herein. If future funding is allocated, Milpitas shall provide a detailed description of the approved project to be attached hereto and incorporated by reference herein.

(b) Milpitas shall use the funds granted under this Agreement in a manner consistent with:
   i. The applications submitted by the County to the State for the grant under this Agreement;
   ii. The grant guidelines issued by the State for the grant under this Agreement; and
   iii. The notifications issued by the State of the approval of the grant under this Agreement

(c) The documents described in Exhibit B of this Agreement (collectively the "State Grant Requirements") are on file with the County and the granting agencies of the State, and are hereby incorporated into this Agreement. Milpitas hereby acknowledges that it has received a copy of the State Grant Requirements.

(d) Milpitas shall use the funds granted under this Agreement only for the purpose of implementing applicable initiatives under the 2019 SHSGP program, as indicated in Exhibit A, "SHSGP Project Funding". Milpitas shall not use the funds granted under this Agreement for any other purpose. Incumbents filling positions funded by the 2019 SHSGP program shall work at a location inside of the Santa Clara County Operational Area, and the work of grant-funded personnel must be solely focused on threats to the Santa Clara County Operational Area. County will not disburse funds to or otherwise pay Milpitas for services that do not address a terrorism nexus, or for materials, equipment, or supplies provided by Milpitas that are beyond the scope of the services, materials, equipment, or supplies agreed upon in this Agreement or a lawfully executed written amendment.

3. Performance and Reporting Requirements

(a) Performance reports indicating the status of outstanding projects are due to the County Grants Administrator on a quarterly basis as follows:

(b) The following dates represent the Grant Performance Period for the SHSGP program:

- Performance Period 1 (September 1, 2019 – December 31, 2019) – due by January 15, 2020
- Performance Period 2 (January 1, 2020 – March 31, 2020) – due by April 15, 2020
- Performance Period 3 (April 1, 2020 – June 30, 2020) – due by July 15, 2020
- Performance Period 4 (July 1, 2020 – September 30, 2020) – due by October 15, 2020
- Performance Period 5 (October 1, 2020 – December 31, 2020) – due by January 15, 2021
- Performance Period 6 (January 1, 2021 – March 31, 2021) – due by April 15, 2021
- Performance Period 7 (April 1, 2021 – June 30, 2021) – due by July 15, 2021
- Performance Period 8 (July 1, 2021 – September 30, 2021) – due by October 15, 2021
- Performance Period 9 (October 1, 2021 – December 31, 2021) – due by January 15, 2022
- Performance Period 10 (January 1, 2022 – March 31, 2022) – due by April 30, 2022

(c) The County will provide Milpitas with a report template (Exhibit C, "Performance Report"), and Milpitas will utilize the template to complete the performance submittal to the County.

(d) Payments made by the County to Milpitas are conditioned upon the timely receipt of applicable, accurate and complete reports, including supporting document, to be submitted by Milpitas.

(e) Milpitas will notify the County representative identified in Article VII, Section I, within 15 days, when Milpitas has completed all performance obligations for these grants.

(f) Milpitas will provide single audit reports to the County by July 31st of each fiscal year.

Article V. Term and Termination

1. Term of Agreement

This Agreement is effective from September 1, 2019 through May 31, 2022.

2. Availability of Funds

(a) The parties acknowledge and agree that this Agreement is dependent upon the availability of county, regional, State and/or federal funding.

(b) Budgetary Contingency: This Agreement is contingent upon the appropriation of sufficient funding by County for the products and services covered by this Agreement. If funding is reduced or eliminated by County for the products or services covered by this Agreement, County has the option to either terminate this Agreement with no liability occurring to County or to offer an amendment to this Agreement indicating the reduced amount.

(c) The obligations of County to make payments in accordance with the provisions of this Agreement may be delayed, reduced or terminated as a result of any delay, reduction, or change in allocation or allotment in funding to County from federal, State or other regional funding sources.

4. Termination

(a) Termination for Convenience. County shall have the option, in its sole discretion, to terminate this Agreement at any time without cause upon written notice to Milpitas. The written notice shall specify the date on which termination shall become effective, which shall be no less than seven (7) days from the date of the notice.

(b) Termination for Cause. Either party may terminate this Agreement for cause upon written notice to the other party. The written notice shall specify the date on which termination shall become effective, which shall be no less than thirty (30) days from the date of the notice. Termination for cause includes, but is not limited to, a material breach of this Agreement, a violation of any applicable laws, or failure to comply with applicable SHSGP guidelines.

(c) Opportunity to Cure. In the event of termination for material breach of this Agreement, the non-breaching party shall give written notice of the breach to the breaching party, specifying the breach/cause. The breaching party shall not be deemed in default and the non-breaching party shall not institute proceedings or exercise any remedies against the breaching party unless the breach has not been cured, corrected or remedied within thirty (30) days after the breaching party's receipt of the notice of breach, or within such longer period as may be reasonably required to cure, correct or remedy the breach, provided the breaching party has commenced its cure, correction or remedy within the thirty (30) day period and diligently and continuously pursues that cure, correction or remedy.

(d) If this Agreement is terminated, Milpitas shall return SHSGP funding in accordance with SHSGP program guidelines.

Article VI. Indemnification and Liabilities

1. Indemnification by Milpitas

In lieu of and notwithstanding the pro rata risk allocation that might otherwise be imposed between the parties under Government Code section 895.6, County and Milpitas agree instead that under Government Code section 895.4, Milpitas shall fully indemnify and hold County, its officers, board members, employees, and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of Milpitas, its officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to Milpitas under this Agreement. This indemnity shall include, without limitation, reasonable attorneys' fees, consultants and experts and related costs, and County's cost of investigating any claim.

2. Duty to Defend

Milpitas acknowledges and agrees that its obligation to defend County under Article VI: (a) is an immediate obligation, independent of its other obligations under this Agreement; and (b) applies to any claim, expense, cost, damage, or liability falling within the scope of Article VI, regardless of whether the allegations made in connection with that claim, expense, cost, damage, or liability may be groundless, false, or fraudulent. County shall provide Milpitas with prompt notice of any claim, expense, cost, damage, or liability under Article VI and Milpitas shall have the right to defend, settle, or compromise that claim, expense, cost, damage, or liability, provided, however, that County shall have the right to retain its own counsel at Milpitas's expense if representation of County by counsel retained by Milpitas would result in a conflict of interest, and that Milpitas shall obtain County's prior written consent to settle or compromise if Milpitas contends that County shares in any liability. County's failure to notify Milpitas promptly of any claim, expense, cost, damage, or liability shall not relieve Milpitas of liability to County under Article VI unless that failure materially impairs Milpitas's ability to defend against the claim, expense, cost, damage, or liability.

3. Limitation on Liability

County, its officers, board members, employees, and agents shall not be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of Milpitas, its officers, board members, employees, or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to Milpitas under this Agreement.

County's obligations under this Agreement shall be limited to the aggregate amount of SHSGP funds actually disbursed. Notwithstanding any other provision in this Agreement or any other document or communication between County and Milpitas relating to this Agreement, in no event shall County be liable for any damages arising out of or in connection with this Agreement, the SHSGP funds, Milpitas's Spend Plan, or any activities performed in connection with this Agreement.

Article VII. Miscellaneous

1. Notice

All notices required by this Agreement shall be deemed given when provided in writing and delivered personally or deposited in the United States mail, postage prepaid, return receipt requested, addressed to the other party at the address set forth below or at such other address as the party may designate in writing:

To Milpitas:

John Torrez, Police Captain
Milpitas Police Department
1275 North Milpitas Boulevard
Milpitas, CA 95035

To County:

Michelle Sandoval
Grant and Administrative Services Manager
County of Santa Clara Office of Emergency Management
55 W. Younger Ave., Suite 450
San Jose, CA 95110

2. Compliance with all Laws, Including Nondiscrimination, Equal Opportunity, and Wage Theft Prevention

(a) Compliance with All Laws. Milpitas shall comply with all applicable Federal, State, and local laws, regulations, rules, and policies (collectively, "Laws"), including but not limited to the non-discrimination, equal opportunity, and wage and hour Laws referenced in the paragraphs below.

(b) Compliance with Non-Discrimination and Equal Opportunity Laws: Milpitas shall comply with all applicable Laws concerning nondiscrimination and equal opportunity in employment and contracting, including but not limited to the following: Santa Clara County's policies for contractors on nondiscrimination and equal opportunity; Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973 (Sections 503 and 504); the Equal Pay Act of 1963; California Fair Employment and Housing Act (Gov. Code § 12900 et seq.); California Labor Code sections 1101, 1102, and 1197.5; and the Genetic Information Nondiscrimination Act of 2008. In addition to the foregoing, Milpitas shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political belief, organizational affiliation, or marital status in the recruitment, selection for training (including but not limited to apprenticeship), hiring, employment, assignment, promotion, layoff, rates of pay or other forms of compensation. Nor shall Milpitas discriminate in the provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

(c) Compliance with Wage and Hour Laws: Milpitas shall comply with all applicable wage and hour Laws, which may include but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and, if applicable, any local minimum wage, prevailing wage, or living wage Laws.

(d) Definitions: For purposes of this Subsection (h), the following definitions shall apply. A "Final Judgment" shall mean a judgment, decision, determination, or order (a) which is issued by a court of law, an investigatory government agency authorized by law to enforce an applicable Law, an arbiter, or arbitration panel and (b) for which all appeals have been exhausted or the time period to appeal has expired. For pay equity Laws, relevant investigatory government agencies include the federal Equal Employment Opportunity Commission, the California Division of Labor Standards Enforcement, and the California Department of Fair Employment and Housing. Violation of a pay equity Law shall mean unlawful discrimination in compensation on the basis of an individual's sex, gender, gender identity, gender expression, sexual orientation,

race, color, ethnicity, or national origin under Title VII of the Civil Rights Act of 1964 as amended, the Equal Pay Act of 1963, California Fair Employment and Housing Act, or California Labor Code section 1197.5, as applicable. For wage and hour Laws, relevant investigatory government agencies include the federal Department of Labor, the California Division of Labor Standards Enforcement, and the Milpitas's Office of Equality Assurance.

(e) Prior Judgments, Decisions or Orders against Contractor: By signing this Agreement, Milpitas affirms that it has disclosed any final judgments that (A) were issued in the five years prior to executing this Agreement by a court, an investigatory government agency, arbiter, or arbitration panel and (B) found that Milpitas violated an applicable wage and hour law or pay equity law. Milpitas further affirms that it has satisfied and complied with – or has reached Agreement with the County regarding the manner in which it will satisfy – any such final judgments.

(f) Violations of Wage and Hour Laws or Pay Equity Laws During Term of Contract: If at any time during the term of this Agreement, Milpitas receives a Final Judgment rendered against it for violation of an applicable wage and hour Law or pay equity Law, then Milpitas shall promptly satisfy and comply with any such Final Judgment. Milpitas shall inform the Office of the County Executive-Office of Countywide Contracting Management (OCCM) of any relevant Final Judgment against it within 30 days of the Final Judgment becoming final or of learning of the Final Judgment, whichever is later. Milpitas shall also provide any documentary evidence of compliance with the Final Judgment within 5 days of satisfying the Final Judgment. Any notice required by this paragraph shall be addressed to the Office of the County Executive-OCCM at 70 W. Hedding Street, East Wing, 11th Floor, San José, CA 95110. Notice provisions in this paragraph are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the Office of the County Executive-OCCM satisfies the notice requirements in this paragraph.

(g) Access to Records Concerning Compliance with Pay Equity Laws: In addition to and notwithstanding any other provision of this Agreement concerning access to Milpitas's records, Milpitas shall permit the County and/or its authorized representatives to audit and review records related to compliance with applicable pay equity Laws. Upon the County's request, Milpitas shall provide the County with access to any and all facilities and records, including but not limited to financial and employee records that are related to the purpose of this Section, except where prohibited by federal or state laws, regulations or rules. County's access to such records and facilities shall be permitted at any time during Milpitas's normal business hours upon no less than 10 business days' advance notice.

(h) Pay Equity Notification: Milpitas shall (1) at least once in the first year of this Agreement and annually thereafter, provide each of its employees working in California and each person applying to Milpitas for a job in California (collectively, "Employees and Job Applicants") with an electronic or paper copy of all applicable pay equity Laws or (2) throughout the term of this Agreement, continuously post an electronic copy of all applicable pay equity Laws in conspicuous places accessible to all of Milpitas's Employees and Job Applicants.

(i) Material Breach: Failure to comply with any part of this Section shall constitute a material breach of this Agreement. In the event of such a breach, the County may, in its discretion, exercise any

or all remedies available under this Agreement and at law. County may, among other things, take any or all of the following actions:

1. Suspend or terminate any or all parts of this Agreement.
2. Withhold payment to Milpitas until full satisfaction of a Final Judgment concerning violation of an applicable wage and hour Law or pay equity Law.
3. Offer Milpitas an opportunity to cure the breach.

(j) Subcontractors: Milpitas shall impose all of the requirements set forth in this Section on any subcontractors permitted to perform work under this Agreement. This includes ensuring that any subcontractor receiving a Final Judgment for violation of an applicable Law promptly satisfies and complies with such Final Judgment.

3. County No-Smoking Policy

Milpitas and its employees, agents and subcontractors shall comply with County's No Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all County-owned and operated health facilities, (2) within 30 feet surrounding County-owned buildings and leased buildings where County is the sole occupant, and (3) in all County vehicles.

4. Food and Beverage Standards

Except in the event of an emergency or medical necessity, the following nutritional standards shall apply to any foods and/or beverages purchased by Milpitas with County funds for County-sponsored meetings or events.

If food is to be provided, healthier food options shall be offered. "Healthier food options" include (1) fruits, vegetables, whole grains, and low-fat and low-calorie foods; (2) minimally processed foods without added sugar and with low sodium; (3) foods prepared using healthy cooking techniques; and (4) foods with less than 0.5 grams of trans-fat per serving. Whenever possible, Milpitas shall (1) offer seasonal and local produce; (2) serve fruit instead of sugary, high-calorie desserts; (3) attempt to accommodate special dietary and cultural needs; and (4) post nutritional information and/or a list of ingredients for items served. If meals are to be provided, a vegetarian option shall be provided, and Milpitas should consider providing a vegan option. If pre-packaged snack foods are provided, the items shall contain: (1) no more than 35% of calories from fat, unless the snack food items consist solely of nuts or seeds; (2) no more than 10% of calories from saturated fat; (3) zero trans-fat; (4) no more than 35% of total weight from sugar and caloric sweeteners, except for fruits and vegetables with no added sweeteners or fats; and (5) no more than 360 mg of sodium per serving.

If beverages are to be provided, beverages that meet the County's nutritional criteria are: (1) water with no caloric sweeteners; (2) unsweetened coffee or tea, for which sugar and sugar substitutes may be provided as condiments; (3) unsweetened, unflavored nonfat or 1% low-fat dairy milk; (4) plant-derived milk (e.g., soy milk, rice milk, and almond milk) with no more than 130 calories per 8-ounce serving; (5) 100% fruit or vegetable juice (limited to a maximum of 8 ounces per container); and (6) other low-calorie beverages (including tea and/or diet soda) that do not exceed 40 calories per 8-ounce serving. Sugar-sweetened beverages shall not be provided.

5. Governing Law

This Agreement has been executed and delivered in, and shall be construed and enforced in accordance with, the laws of the State of California.

6. Assignment

The parties may not assign this Agreement or the rights and obligations hereunder without the specific written consent of the other.

7. Entire Agreement

This document represents the entire Agreement between the parties with respect to the subject matter hereof. All prior negotiations and written and/or oral agreements between the parties with respect to the subject matter of this Agreement are merged into this Agreement.

8. Amendments

This Agreement may only be amended by an instrument signed by the parties.

9. Counterparts; Contract Execution

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. Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed Agreement, or an electronically signed Agreement, 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.

10. Severability

If any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid or unenforceable, the same shall either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

11. 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 in writing, and shall apply to the specific instance expressly stated.

12. Conflict of Interest

In accepting this Agreement, Milpitas covenants that is presently has no interest and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of services under this Agreement. Milpitas is responsible for assuring compliance of its subcontractors, if any, with the requirements of this provision.

13. Certified Resolution of Signature Authority

Upon request of County, Milpitas shall deliver to County a copy of the resolution(s) authorizing execution, delivery and performance of this Agreement, certified as true, accurate and complete by the appropriate authorized representative of Milpitas.

Signed:

COUNTY OF SANTA CLARA		CITY OF MILPITAS	
By_____	_____	By_____	_____
Garry Herceg	Date	Steven McHarris	Date
Deputy County Executive		City Manager	
		By_____	_____
		Armando Corpuz	Date
		Chief of Police	
Approved as to Form and Legality:		Approved as to Form and Legality:	
_____	_____	_____	_____
Kavita Narayan	Date	Christopher Diaz	Date
Lead Deputy County Counsel		City Attorney	

Enclosures

Exhibit A	2019 SHSGP Project Funding
Exhibit B	Grant Assurances
Exhibit C	Quarterly Reporting Requirements and Report Template
Exhibit D	Financial Disclosure Form

Standard Assurances
For All Cal OES Federal Grant Programs

As the duly authorized representative of the Applicant, I hereby certify that the Applicant has the legal authority to apply for federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay any non-federal share of project cost) to ensure proper planning, management, and completion of the project described in this application, within prescribed timelines.

I further acknowledge that the Applicant is responsible for reviewing and adhering to all requirements within the:

(a) Applicable Federal Regulations (see below);
(b) Federal Program Notice of Funding Opportunity (NOFO);
(c) Federal Preparedness Grants Manual;
(d) California Supplement to the NOFO; and
(e) Federal and State Grant Program Guidelines.

Federal Regulations
Government cost principles, uniform administrative requirements, and audit requirements for federal grant programs are set forth in Title 2, Part 200 of the Code of Federal Regulations (C.F.R.). Updates are issued by the Office of Management and Budget (OMB) and can be found at http://www.whitehouse.gov/omb/.

Significant state and federal grant award requirements (some of which appear in the documents listed above) are set forth below. The Applicant hereby agrees to comply with the following:

1. **Proof of Authority**
   The Applicant will obtain written authorization from the city council, governing board, or authorized body in support of this project. This written authorization must specify that the Applicant and the city council, governing board, or authorized body agree:

   (a) To provide all matching funds required for the grant project and that any cash match will be appropriated as required;
   (b) Any liability arising out of the performance of this agreement shall be the responsibility of the Applicant and the city council, governing board, or authorized body;
   (c) Grant funds shall not be used to supplant expenditures controlled by the city council, governing board, or authorized body; and
   (d) The official executing this agreement is, in fact, authorized to do so.

This Proof of Authority must be maintained on file and readily available upon request.

2. **Period of Performance**
The Applicant will initiate work after approval of the award and complete all work within the period of performance specified in the grant.

3. **Lobbying and Political Activities**
As required by Section 1352, Title 31 of the United States Code (U.S.C.), for persons entering into a contract, grant, loan, or cooperative agreement from an agency or requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan, the Applicant certifies that:

(a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
(b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

The Applicant will also comply with provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and §§ 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.

Finally, the Applicant agrees that federal funds will not be used, directly or indirectly, to support the enactment, repeal, modification or adoption of any law, regulation or policy without the express written approval from the California Governor's Office of Emergency Services (Cal OES) or the federal awarding agency.

4. **Debarment and Suspension**
As required by Executive Orders 12549 and 12689, and 2 C.F.R. § 200.213 and codified in 2 C.F.R. Part 180, Debarment and Suspension, the Applicant will provide protection against waste, fraud, and abuse by debarring or suspending those persons deemed irresponsible in their dealings with the federal government. The Applicant certifies that it and its principals, recipients, or subrecipients:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and
(d) Have not within a three-year period preceding this application had one or more public transaction (federal, state, or local) terminated for cause or default.

Where the Applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

5. **Non-Discrimination and Equal Employment Opportunity**
The Applicant will comply with all federal statutes relating to non-discrimination. These include, but are not limited to, the following:

(a) Title VI of the Civil Rights Act of 1964 (Public Law (P.L.) 88-352 and 42 U.S.C. § 2000d et. seq.) which prohibits discrimination on the basis of race, color, or national origin and requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services;
(b) Title IX of the Education Amendments of 1972, (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex in any federally funded educational program or activity;
(c) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794), which prohibits discrimination against those with disabilities or access and functional needs;
(d) Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability and requires buildings and structures be accessible to those with disabilities and access and functional needs (42 U.S.C. §§ 12101-12213);
(e) Age Discrimination Act of 1975, (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age;
(f) Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd—2), relating to confidentiality of patient records regarding substance abuse treatment;
(g) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), relating to nondiscrimination in the sale, rental or financing of housing as implemented by the Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)— be designed and constructed with certain accessible features (See 24 C.F.R. § 100.201);
(h) Executive Order 11246, which prohibits federal contractors and federally assisted construction contractors and subcontractors, who do over $10,000 in Government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identification or national origin;
(i) Executive Order 11375, which bans discrimination on the basis of race, color, religion, sex, sexual orientation, gender identification, or national origin in hiring and employment in both the United States federal workforce and on the part of government contractors;
(j) California Public Contract Code § 10295.3, which prohibits discrimination based on domestic partnerships and those in same sex marriages;

(k) DHS policy to ensure the equal treatment of faith-based organizations, under which all applicants and recipients must comply with equal treatment policies and requirements contained in 6 C.F.R. Part 19;
(l) Any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made; and
(m) The requirements of any other nondiscrimination statute(s) which may apply to the application.

In addition to the items listed in (a) through (m), the Applicant will comply with California's Fair Employment and Housing Act (FEHA). FEHA prohibits harassment and discrimination in employment because of ancestry, familial status, race, color, religious creed (including religious dress and grooming practices), sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, mental and physical disability, genetic information, medical condition, age, pregnancy, denial of medical and family care leave, or pregnancy disability leave (California Government Code §§12940, 12945, 12945.2), military and veteran status, and/or retaliation for protesting illegal discrimination related to one of these categories, or for reporting patient abuse in tax supported institutions.

6. **Drug-Free Workplace**
As required by the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 et seq.), the Applicant certifies that it will maintain a drug-free workplace and a drug-free awareness program as outlined in the Act.

7. **Environmental Standards**
The Applicant will comply with state and federal environmental standards, which may be prescribed pursuant to the following, as applicable:

(a) California Environmental Quality Act (CEQA) (California Public Resources Code §§ 21000- 21177), to include coordination with the city or county planning agency;
(b) CEQA Guidelines (California Code of Regulations, Title 14, Division 6, Chapter 3, §§ 15000- 15387);
(c) Federal Clean Water Act (CWA) (33 U.S.C. § 1251 et seq.), which establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters;

(d) Federal Clean Air Act of 1955 (42 U.S.C. § 7401) which regulates air emissions from stationary and mobile sources;
(e) Institution of environmental quality control measures under the National Environmental Policy Act (NEPA) of 1969 (P.L. 91-190); the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA; and Executive Order 12898 which focuses on the environmental and human health effects of federal actions on minority and low-income populations with the goal of achieving environmental protection for all communities;
(f) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988;
(g) Executive Order 11514 which sets forth national environmental standards;
(h) Executive Order 11738 instituted to assure that each federal agency empowered to enter into contracts for the procurement of goods, materials, or services and each federal agency empowered to extend federal assistance by way of grant, loan, or contract shall undertake such procurement and assistance activities in a manner that will result in effective enforcement of the Clean Air Act and the Federal Water Pollution Control Act Executive Order 11990 which requires preservation of wetlands;
(i) The Safe Drinking Water Act of 1974, (P.L. 93-523);
(j) The Endangered Species Act of 1973, (P.L. 93-205);
(k) Assurance of project consistency with the approved state management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.);
(l) Conformity of Federal Actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.);
(m) Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

The Applicant shall not be: 1) in violation of any order or resolution promulgated by the State Air Resources Board or an air pollution district; 2) subject to a cease and desist order pursuant to § 13301 of the California Water Code for violation of waste discharge requirements or discharge prohibitions; or 3) determined to be in violation of federal law relating to air or water pollution.

8. Audits

For subrecipients expending $750,000 or more in federal grant funds annually, the Applicant will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and Title 2 of the Code of Federal Regulations, Part 200, Subpart F Audit Requirements.

9. Access to Records

In accordance with 2 C.F.R. § 200.336, the Applicant will give the awarding agency, the Comptroller General of the United States and, if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award. The Applicant will require any subrecipients, contractors, successors, transferees and assignees to acknowledge and agree to comply with this provision.

10. Conflict of Interest

The Applicant will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

11. Financial Management

False Claims for Payment - The Applicant will comply with 31 U.S.C §§ 3729-3733 which sets forth that no subrecipient, recipient, or subrecipient shall submit a false claim for payment, reimbursement or advance.

12. Reporting - Accountability

The Applicant agrees to comply with applicable provisions of the Federal Funding Accountability and Transparency Act (FFATA) (P.L. 109-282), specifically (a) the reporting of subawards obligating $25,000 or more in federal funds and (b) executive compensation data for first-tier subawards. This includes the provisions of FFATA, which includes requirements for executive compensation, and also requirements implementing the Act for the non-federal entity at 2 C.F.R. Part 25 Financial Assistance Use of Universal Identifier and Central Contractor Registration and 2 C.F.R. Part 170 Reporting Subaward and Executive Compensation Information.

13. Whistleblower Protections

The Applicant also must comply with statutory requirements for whistleblower protections at 10 U.S.C. § 2409, 41 U.S.C. § 4712, and 10 U.S.C. § 2324, 41 U.S.C. § 4304 and § 4310.

14. Human Trafficking

The Applicant will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. § 7104) which prohibits grant award recipients or a subrecipient from: (1) engaging in trafficking in persons during the period of time that the award is in effect; (2) procuring a commercial sex act during the period of time that the award is in effect; or (3) using forced labor in the performance of the award or subawards under the award.

15. Labor Standards

The Applicant will comply with the following federal labor standards:

(a) The Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), as applicable, and the Copeland Act (40 U.S.C. § 3145 and 18 U.S.C. § 874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally-assisted construction contracts or subcontracts, and

(b) The Federal Fair Labor Standards Act (29 U.S.C. § 201 et al.) as they apply to employees of institutes of higher learning (IHE), hospitals and other non-profit organizations.

16. Worker's Compensation

The Applicant must comply with provisions which require every employer to be insured to protect workers who may be injured on the job at all times during the performance of the work of this Agreement, as per the workers compensation laws set forth in California Labor Code §§ 3700 et seq.

17. Property-Related

If applicable to the type of project funded by this federal award, the Applicant will:

(a) Comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of federal participation in purchase;

(b) Comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires subrecipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more;

(c) Assist the awarding agency in assuring compliance with Section 106 of the
(d) National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), Executive Order 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §469a-1 et seq.); and
(e) Comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4831 and 24 CFR Part 35) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

18. Certifications Applicable Only to Federally-Funded Construction Projects

For all construction projects, the Applicant will:

(a) Not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the federal awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with federal assistance funds to assure nondiscrimination during the useful life of the project;
(b) Comply with the requirements of the awarding agency with regard to the drafting, review and approval of construction plans and specifications; and
(c) Provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progressive reports and such other information as may be required by the assistance awarding agency or State.

19. Use of Cellular Device While Driving is Prohibited

Applicants are required to comply with California Vehicle Code sections 23123 and 23123.5. These laws prohibit driving motor vehicle while using an electronic wireless communications device to write, send, or read a text-based communication. Drivers are also prohibited from the use of a wireless telephone without hands-free listening and talking, unless to make an emergency call to 911, law enforcement, or similar services.

20. California Public Records Act and Freedom of Information Act

The Applicant acknowledges that all information submitted in the course of applying for funding under this program, or provided in the course of an entity's grant management activities that are under Federal control, is subject to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the California Public Records Act, California Government Code section 6250 et seq. The Applicant should consider these laws and consult its own State and local laws and regulations regarding the release of information when reporting sensitive matters in the grant application, needs assessment, and strategic planning process.

HOMELAND SECURITY GRANT PROGRAM (HSGP) – PROGRAM SPECIFIC ASSURANCES / CERTIFICATIONS

21. Reporting Accusations and Findings of Discrimination

If during the past three years the recipient has been accused of discrimination on any basis the recipient must provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements to the DHS Financial Assistance Office and the DHS Office for Civil Rights and Civil Liberties (CRCL) by e-mail at CRCL@hq.dhs.gov or by mail at U.S. Department of Homeland Security, Office for Civil Rights and Civil Liberties, Building 410, Mail Stop #0190, Washington, D.C. 20528.

In the courts or administrative agencies make a finding of discrimination on grounds of race, color, national origin (including LEP), sex, age, disability, religion, or familial status against the recipient, or the recipients settle a case or matter alleging such discrimination, recipients must forward a copy of the complaint and findings to the DHS Financial Assistance Office and the CRCL by e-mail or mail at the addresses listed above.

The United States has the right to seek judicial enforcement of these obligations.

22. Acknowledgment of Federal Funding from DHS

All recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.

23. Activities Conducted Abroad

All recipients must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

24. Best Practices for Collection and Use of Personally Identifiable Information (PII)

DHS defines personally identifiable information (PII) as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. All recipients who collect PII are required to have a publically-available privacy policy that describes standards on the usage and maintenance of PII they collect. Recipients may also find the DHS Privacy Impact Assessments: Privacy Guidance and Privacy template a useful resource respectively.

25. Copyright

All recipients must affix the applicable copyright notices of 17 U.S.C. §§ 401 or 402 and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.

26. Duplication of Benefits

Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions, or for other reasons. However, these prohibitions would not preclude recipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions.

27. Energy Policy and Conservation Act

All recipients must comply with the requirements of 42 U.S.C. § 6201 which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

28. Federal Debt Status

All recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. See OMB Circular A-129.

29. Fly America Act of 1974

All recipients must comply with Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 U.S.C. § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.

30. Hotel and Motel Fire Safety Act of 1990

In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990, all Applicants must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974, as amended, 15 U.S.C. § 2225a.

31. Non-supplanting Requirement

All recipients who receive federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.

32. Patents and Intellectual Property Rights

Unless otherwise provided by law, recipients are subject to the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and codified in 35 U.S.C. § 200 et seq. All recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. § 401.14.

33. SAFECOM

All recipients who receive federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

34. Terrorist Financing

All recipients must comply with Executive Order 13224 and U.S. law that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Recipients are legally responsible to ensure compliance with the Order and laws.

35. Reporting of Matters Related to Recipient Integrity and Performance

If the total value of the recipient's currently active grants, cooperative agreements, and procurement contracts from all federal assistance offices exceeds $10,000,000 for any period of time during the period of performance of this federal financial assistance award, you must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated here by reference in the award terms and conditions.

36. USA Patriot Act of 2001

All recipients must comply with requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), which amends 18 U.S.C. §§ 175–175c.

37. Use of DHS Seal, Logo, and Flags

All recipients must obtain permission from their DHS Financial Assistance Office, prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

Standard Assurances
For All Cal OES Federal Grant Programs

IMPORTANT
The purpose of the assurance is to obtain federal and state financial assistance, including any and all federal and state grants, loans, reimbursement, contracts, etc. The Applicant recognizes and agrees that state financial assistance will be extended based on the representations made in this assurance. This assurance is binding on the Applicant, its successors, transferees, assignees, etc. Failure to comply with any of the above assurances may result in suspension, termination, or reduction of grant funds.

All appropriate documentation, as outlined above, must be maintained on file by the Applicant and available for Cal OES or public scrutiny upon request. Failure to comply with these requirements may result in suspension of payments under the grant or termination of the grant or both and the subrecipient may be ineligible for award of any future grants if the Cal OES determines that any of the following has occurred: (1) the recipient has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

All of the language contained within this document must be included in the award documents for all subawards at all tiers. All recipients are bound by the Department of Homeland Security Standard Terms and Conditions 2018, Version 8.1, hereby incorporated by reference, which can be found at: https://www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions.

The undersigned represents that he/she is authorized to enter into this agreement for and on behalf of the Applicant.

Subrecipient: _____

Signature of Authorized Agent: _____

Printed Name of Authorized Agent: _____

Title:_____Date: _____

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Adopt a Resolution to Authorize the Chief of Police to Execute the Grant Agreement with the Office of Traffic Safety to Accept the FY 2021 Office of Traffic Safety Selective Traffic Enforcement Program Grant and approve a budget appropriation in the amount of $57,500**
Category:	Consent Calendar-Public Safety
Meeting Date:	10/6/2020
Staff Contact:	**Assistant Police Chief Jared Hernandez, 408-586-2406**
Recommendation:	1. Adopt a resolution to authorize the Chief of Police to execute the Grant Agreement with the Office of Traffic Safety accepting the FY 2021 Office of Traffic Safety Selective Traffic Enforcement Program Grant. 2. Approve a budget appropriation in the amount of $57,500 for overtime in the Police Department Operating Budget.

Background:
The Office of Traffic Safety (OTS) administers the Selective Traffic Enforcement Program (STEP) that offers grant funds from the California Office of Traffic Safety to reimburse law enforcement agencies for overtime expenditures specifically directed toward traffic safety operations.

The grant funding is directed at conducting best practice strategies to reduce the number of persons killed and injured in traffic related collisions involving impaired driving and other primary collision factors. The funded strategies may include enforcement operations focusing on impaired driving, distracted driving, nighttime seatbelt use, motorcycle safety, and pedestrian and bicycle safety. Operations are conducted in areas with a disproportionate number of traffic collisions. Other funded strategies may include public education and police department staff training.

The City of Milpitas has been approved for a grant of $57,500 to conduct driving under the influence (DUI) saturation patrols, DUI checkpoints, traffic enforcement operations, distracted driving enforcement, motorcycle safety, pedestrian and bicycle safety, public education, equipment purchases, and training on an overtime basis in conjunction with STEP between October 1, 2020 and September 30, 2021.

Analysis:
The City of Milpitas is not required to accept the OTS STEP grant funding; however, traffic safety is a paramount concern in the City of Milpitas and this funding will help address traffic safety issues throughout the City. If accepted, the City of Milpitas must agree to utilize the funding for enforcement, public education, and/or training related to specific traffic safety issues on an overtime basis. Examples of specific issues include but are not limited to: DUI, distracted driving, seat belt violation, and pedestrian/bicycle safety. Enforcement and public education are important components to reducing collisions and saving lives. The spending period for this funding begins October 1, 2020 and concludes on September 30, 2021.

Policy Alternative:

Alternative: Do not accept the overtime reimbursement funding from the FY 2021 OTS STEP grant.

Pros: There are no identified benefits to this alternative.
Cons: The Police Department would not be able to increase overtime enforcement, education, or training towards traffic safety.

Reason not recommended: The FY 2021 OTS STEP grant award does not require matching funds nor are there any requirements that result in a negative impact. The City will receive full reimbursement for overtime expenses.

Fiscal Impact:
A budget appropriation is needed for $57,500 for the overtime expenditures in the Police Department's operating budget. The overtime expenditures will be reimbursed by the OTS STEP grant funding. The grant does not require any matching funds.

California Environmental Quality Act
Not applicable

Recommendations:
1) Adopt a resolution authorizing the Chief of Police to execute the Grant Agreement with the Office of Traffic Safety to accept the grant for the 2021 Selective Traffic Enforcement Program (STEP).
2) Approve a budget appropriation in the amount of $57,500 for overtime in the Police Department Operating Budget to be reimbursed by the FY 2021 OTS STEP grant funding.

Attachments:
1. Resolution
2. OTS STEP Grant 2021 Agreement
3. Budget change form

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING THE POLICE CHIEF TO EXECUTE THE AGREEMENT WITH THE CALIFORNIA OFFICE OF TRAFFIC SAFETY (OTS) FOR THE 2021 SELECTIVE TRAFFIC ENFORCEMENT PROGRAM (STEP) GRANT

WHEREAS, California Office of Traffic Safety (OTS) is administering the 2021 Selective Traffic Enforcement Program (STEP) that offers grand funds from the California Office of Traffic Safety to reimburse law enforcement agencies for overtime expenditure specifically directed towards Traffic Safety Operations; and

WHEREAS, best practices strategies will be conducted to reduce the number of persons killed and injured in traffic collisions. The funded strategies may include enforcement operations focusing on impaired driving, distracted driving, night-time seat belt use, motorcycle safety, pedestrian safety & bicycle safety. Operations will be conducted in areas with disproportionate numbers of traffic collisions. Other funded strategies may include public awareness, educational programs, and training for law enforcement; and

WHEREAS, the City of Milpitas has been awarded an $57,500.00 STEP Grant to conduct driving under the influence (DUI) saturation patrols, DUI checkpoints, traffic enforcement operations, distracted driving enforcement, motorcycle safety program, pedestrian and bicycle safety programs, public education, equipment purchases, and training on an overtime basis in conjunction with the STEP grant between October 1, 2020 and September 30, 2021; and

WHEREAS, there has been submitted to the City Council of the City of Milpitas a proposed Agreement to be entered into by and between the City of Milpitas and the California Office of Traffic Safety, a copy of which is attached hereto as **Exhibit A** and is made a part hereof.

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

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

2. The City Council accepts the Agreement attached as **Exhibit A** and authorizes the Chief of Police to execute the Agreement for and on behalf of the City of Milpitas.

PASSED AND ADOPTED this _____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Rich Tran, Mayor

APPROVED AS TO FORM:

_____
Christopher J. Diaz, City Attorney

1. GRANT TITLE
Selective Traffic Enforcement Program (STEP)

2. NAME OF AGENCY
Milpitas

3. Grant Period
From: 10/01/2020
To: 09/30/2021

4. AGENCY UNIT TO ADMINISTER GRANT
Milpitas Police Department

5. GRANT DESCRIPTION
Best practice strategies will be conducted to reduce the number of persons killed and injured in crashes involving alcohol and other primary crash factors. The funded strategies may include impaired driving enforcement, enforcement operations focusing on primary crash factors, distracted driving, night-time seat belt enforcement, special enforcement operations encouraging motorcycle safety, enforcement and public awareness in areas with a high number of bicycle and pedestrian crashes, and educational programs. These strategies are designed to earn media attention thus enhancing the overall deterrent effect.

6. Federal Funds Allocated Under This Agreement Shall Not Exceed: $57,500.00

7. TERMS AND CONDITIONS: The parties agree to comply with the terms and conditions of the following which are by this reference made a part of the Agreement:

- Schedule A – Problem Statement, Goals and Objectives and Method of Procedure
- Schedule B – Detailed Budget Estimate and Sub-Budget Estimate (if applicable)
- Schedule B-1 – Budget Narrative and Sub-Budget Narrative (if applicable)
- Exhibit A – Certifications and Assurances
- Exhibit B* – OTS Grant Program Manual
- Exhibit C – Grant Electronic Management System (GEMS) Access

*Items shown with an asterisk (*), are hereby incorporated by reference and made a part of this agreement as if attached hereto.

These documents can be viewed at the OTS home web page under Grants: www.ots.ca.gov.

We, the officials named below, hereby swear under penalty of perjury under the laws of the State of California that we are duly authorized to legally bind the Grant recipient to the above described Grant terms and conditions.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

8. Approval Signatures

A. GRANT DIRECTOR

NAME: Joseph Heylen
TITLE: Sergeant
EMAIL: jheylen@ci.milpitas.ca.gov
PHONE: (408) 586-2435
ADDRESS: 1275 N. Milpitas Blvd.
Milpitas, CA 95035

Joseph A. Heylen
Joseph A. Heylen (Aug 6, 2020 06:49 PDT)
(Signature) — Aug 6, 2020 (Date)

B. AUTHORIZING OFFICIAL

ADDRESS: Armando Corpuz
Chief of Police
acorpuz@ci.milpitas.ca.gov
(408) 586-2402
1275 N. Milpitas Blvd.
Milpitas, CA 95035

(Signature) — Aug 18, 2020 (Date)

C. FISCAL OFFICIAL

ADDRESS: Walter Rossmann
Director of Finance
wrossmann@ci.milpitas.ca.gov
(408) 586-3111
455 East Calaveras Blvd.
Milpitas, CA 95035

(Signature) — Aug 6, 2020 (Date)

D. AUTHORIZING OFFICIAL OF OFFICE OF TRAFFIC SAFETY

ADDRESS: Barbara Rooney
Director
barbara.rooney@ots.ca.gov
(916) 509-3030
2208 Kausen Drive Suite 300
Elk Grove, CA 95758

Barbara L. Rooney
(Signature) — Aug 19, 2020 (Date)

E. ACCOUNTING OFFICER OF OFFICE OF TRAFFIC SAFETY	9. DUNS INFORMATION
NAME: Carolyn Vu ADDRESS: 2208 Kausen Drive, Suite 300 Elk Grove, CA 95758	DUNS #: 038142642 REGISTERED ADDRESS: 455 E. Calaveras Blvd CITY: Milpitas ZIP+4: 95035-5411

10. PROJECTED EXPENDITURES

FUND	CFDA	ITEM/APPROPRIATION	F.Y.	CHAPTER	STATUTE	PROJECTED EXPENDITURES
164 AL-21	20.608	0521-0890-101	2020	2020	BA/20	$35,000.00
402PT-21	20.600	0521-0890-101	2020	2020	BA/20	$22,500.00
				AGREEMENT TOTAL		**$57,500.00**

I CERTIFY upon my own personal knowledge that the budgeted funds for the current budget year are available for the period and purpose of the expenditure stated above.	AMOUNT ENCUMBERED BY THIS DOCUMENT **$57,500.00** PRIOR AMOUNT ENCUMBERED FOR THIS AGREEMENT **$ 0.00**

OTS ACCOUNTING OFFICER'S SIGNATURE	DATE SIGNED	TOTAL AMOUNT ENCUMBERED TO DATE
Carolyn Vu Carolyn Vu (Aug 18, 2020 12:14 PDT)	Aug 18, 2020	**$57,500.00**

1. PROBLEM STATEMENT

The City of Milpitas is located in northern Santa Clara County and is considered the "Crossroads of Silicon Valley." Milpitas has become a primary commuter connection between Silicon Valley and the bedroom communities in the Central Valley. Highways I-680, I-880, State Route 237, and Montague Expressway, bring a tremendous amount of vehicular traffic through the city. The Santa Clara Valley Transportation Authority (VTA) currently operates a central hub at the Great Mall of Milpitas. Bay Area Rapid Transit (BART) station is expected to be operational in Milpitas this year (2020), and it will draw people from throughout the bay area. The new BART station will be accompanied by a six-story parking garage and is projected to have 10,000 daily passengers at the onset. The current residential population of Milpitas exceeds 80,000 people. Although the city incorporates only 14.5 square miles and has 139 miles of surface streets, tens of thousands of vehicles travel through the city each day. The enormous amount of vehicular traffic creates congestion and safety challenges for the city and its officers. Besides being the crossroads for many drivers, Milpitas is also a destination for workers and consumers from various communities in the bay area. The corporate headquarters and satellite campuses of international companies are located in Milpitas, and some of the major employers include Cisco Systems, Flextronics International, Linear Technology, Kaiser Permanente, and KLA-Tenor. The day time population in Milpitas is estimated to be over 100,000 people. Milpitas is also the home of the Great Mall of the Bay Area, which is Northern California's largest indoor outlet and shopping destination with more than 1.3 million square feet of retail floor space for more than 200 outlet & value stores and more than 32 dining options. The 11 anchor stores and businesses include Kohls, Dicks Sporting Goods, Bed Bath & Beyond, Neiman Marcus Last Call, Saks Fifth Avenue OFF 5th, Century Theaters, Burlington, and Dave and Buster's. The Great Mall of the Bay Area attracts residents throughout Santa Clara County, neighboring Alameda County and throughout the Bay Area. Levi and Avaya stadiums also play a role in traffic congestion during hosted events. Amazon is expected to open a hub warehouse in 2020 and Apple is also expected to open a satellite campus in 2020 or 2021. The Milpitas Police Department continues to address traffic safety concerns and congestion. The major focus has been attempting to reduce the accident rate on the major arterial roadways. In 2018, Milpitas Police responded to approximately 1,134 reported collisions and investigated 642 collisions. The Milpitas Police Department investigated 32 DUI/Drug related collisions. The City of Milpitas has utilized four prior OTS STEP grants. The City of Milpitas could utilize continued funding in the effort to continue to reduce injury traffic collisions, DUI related injury collisions, fatal accidents, and PCF related violations. Reported traffic complaints, including school-related traffic issues, speeding vehicles, and pedestrian violations along our major thoroughfares and in our residential neighborhoods, are significant concerns of our community. Complaints with traffic congestion have increased with the growing economy. Traffic complaints are routed through the Traffic Safety Unit (TSU), and the amount of complaints are a challenge to the unit, which is currently staffed with three (3) motorcycle officers and one (1) motorcycle Sergeant. The TSU previously included a Traffic Lieutenant, a Traffic Sergeant, a Commercial Enforcement Officer, two (2) DUI Enforcement Officers, eight (8) motorcycle officers and one (1) Traffic Investigator. The TSU is responsible for handling all traffic related incidents, with the primary focus of enforcement of traffic laws, and it handles a majority of the vehicle accidents; traffic related calls for service; and issues a majority of the citations. With best practices and focused enforcement plans designed through the Strategic Traffic Enforcement Program (STEP), the Milpitas Police Department could be more successful in addressing the problems associated with DUI drivers, red light runners, speeding vehicles, aggressive driving, and distracted driving, and it would enable an increased pedestrian & bicyclist safety program.

2. PERFORMANCE MEASURES

A. Goals:

1. Reduce the number of persons killed in traffic crashes.
2. Reduce the number of persons injured in traffic crashes.
3. Reduce the number of pedestrians killed in traffic crashes.
4. Reduce the number of pedestrians injured in traffic crashes.
5. Reduce the number of bicyclists killed in traffic crashes.
6. Reduce the number of bicyclists injured in traffic crashes.
7. Reduce the number of persons killed in alcohol-involved crashes.
8. Reduce the number of persons injured in alcohol-involved crashes.

9. Reduce the number of persons killed in drug-involved crashes.
10. Reduce the number of persons injured in drug-involved crashes.
11. Reduce the number of persons killed in alcohol/drug combo-involved crashes.
12. Reduce the number of persons injured in alcohol/drug combo-involved crashes.
13. Reduce the number of motorcyclists killed in traffic crashes.
14. Reduce the number of motorcyclists injured in traffic crashes.
15. Reduce hit & run fatal crashes.
16. Reduce hit & run injury crashes.
17. Reduce nighttime (2100 - 0259 hours) fatal crashes.
18. Reduce nighttime (2100 - 0259 hours) injury crashes.

B. Objectives:	**Target Number**
1. Issue a press release announcing the kick-off of the grant by November 15. The kick-off press releases and media advisories, alerts, and materials must be emailed to the OTS Public Information Officer at pio@ots.ca.gov, and copied to your OTS Coordinator, for approval 14 days prior to the issuance date of the release.	1
2. Participate and report data (as required) in the following campaigns, National Walk to School Day, National Teen Driver Safety Week, NHTSA Winter Mobilization, National Distracted Driving Awareness Month, National Motorcycle Safety Month, National Bicycle Safety Month, National Click it or Ticket Mobilization, NHTSA Summer Mobilization, National Child Passenger Safety Week, and California's Pedestrian Safety Month.	10
3. Develop (by December 31) and/or maintain a “HOT Sheet” program to notify patrol and traffic officers to be on the lookout for identified repeat DUI offenders with a suspended or revoked license as a result of DUI convictions. Updated HOT sheets should be distributed to patrol and traffic officers monthly.	12
4. Send law enforcement personnel to the NHTSA Standardized Field Sobriety Testing (SFST) (minimum 16 hours) POST-certified training.	1
5. Send law enforcement personnel to the NHTSA Advanced Roadside Impaired Driving Enforcement (ARIDE) 16 hour POST-certified training.	1
6. Send law enforcement personnel to the Drug Recognition Expert (DRE) training.	1
7. Conduct DUI/DL Checkpoints. A minimum of 1 checkpoint should be conducted during the NHTSA Winter Mobilization and 1 during the Summer Mobilization. To enhance the overall deterrent effect and promote high visibility, it is recommended the grantee issue an advance press release and conduct social media activity for each checkpoint. For combination DUI/DL checkpoints, departments should issue press releases that mention DL's will be checked at the DUI/DL checkpoint. Signs for DUI/DL checkpoints should read "DUI/Driver's License Checkpoint Ahead." OTS does not fund or support independent DL checkpoints. Only on an exception basis and with OTS pre-approval will OTS fund checkpoints that begin prior to 1800 hours. When possible, DUI/DL Checkpoint screeners should be DRE- or ARIDE-trained.	2
8. Conduct DUI Saturation Patrol operation(s).	12
9. Conduct Traffic Enforcement operation(s), including but not limited to, primary crash factor violations.	9
10. Conduct highly publicized Distracted Driving enforcement operation(s) targeting drivers using hand held cell phones and texting.	5
11. Conduct highly publicized Motorcycle Safety enforcement operation(s) in areas or during events with a high number of motorcycle incidents or crashes resulting from unsafe speed, DUI, following too closely, unsafe lane changes, improper turning, and other primary crash factor violations by motorcyclists and other drivers.	3
12. Conduct highly publicized pedestrian and/or bicycle enforcement operation(s) in areas or during events with a high number of pedestrian and/or bicycle crashes resulting from violations made by pedestrians, bicyclists, and drivers.	2
13. Conduct Traffic Safety educational presentation(s) with an effort to reach community members. Note: Presentation(s) may include topics such as distracted	3

driving, DUI, speed, bicycle and pedestrian safety, seat belts and child passenger safety.	
14. Conduct highly visible collaborative DUI Enforcement operations	3
15. Conduct highly visible collaborative Traffic Enforcement operations	3

3. METHOD OF PROCEDURE

A. Phase 1 – Program Preparation (1st Quarter of Grant Year)

- The department will develop operational plans to implement the "best practice" strategies outlined in the objectives section.
- All training needed to implement the program should be conducted this quarter.
- All grant related purchases needed to implement the program should be made this quarter.
- In order to develop/maintain the "Hot Sheets," research will be conducted to identify the "worst of the worst" repeat DUI offenders with a suspended or revoked license as a result of DUI convictions. The Hot Sheets may include the driver's name, last known address, DOB, description, current license status, and the number of times suspended or revoked for DUI. Hot Sheets should be updated and distributed to traffic and patrol officers at least monthly.
- Implementation of the STEP grant activities will be accomplished by deploying personnel at high crash locations.Media Requirements
- Issue a press release announcing the kick-off of the grant by November 15, but no earlier than October 1. If unable to meet the November 15 date, communicate reasons to your OTS Coordinator. The kick-off press releases and any related media advisories, alerts, and materials must be emailed for approval to the OTS Public Information Officer at pio@ots.ca.gov, and copied to your OTS Coordinator, 14 days prior to the issuance date of the release.

B. Phase 2 – Program Operations (Throughout Grant Year)

- The department will work to create media opportunities throughout the grant period to call attention to the innovative program strategies and outcomes.Media Requirements
- Send all grant-related activity press releases, media advisories, alerts and general public materials to the OTS Public Information Officer (PIO) at pio@ots.ca.gov, with a copy to your OTS Coordinator. The following requirements are for grant-related activities and are different from those regarding any grant kick-off release or announcement.
- If an OTS-supplied, template-based press release is used, there is no need for pre-approval, however, the OTS PIO and Coordinator should be copied when at the same time as the release is distributed to the press.
- If an OTS-supplied template is not used, or is substantially changed, a draft press release shall be sent to the OTS PIO for approval. Optimum lead-time would be 10 days prior to the release distribution date, but should be no less than 5 working days prior to the release distribution date.
- Press releases reporting the immediate and time-valued results of grant activities such as enforcement operations are exempt from the recommended advance approval process, but still should be copied to the OTS PIO and Coordinator when the release is distributed to the press.
- Activities such as warrant or probation sweeps and court stings that could be compromised by advanced publicity are exempt from pre-publicity, but are encouraged to offer embargoed media coverage and to report the results.
- Use the following standard language in all press, media, and printed materials: Funding for this program was provided by a grant from the California Office of Traffic Safety, through the National Highway Traffic Safety Administration.
- Email the OTS PIO at pio@ots.ca.gov and copy your OTS Coordinator at least 30 days in advance, a short description of any significant grant-related traffic safety event or program so OTS has sufficient notice to arrange for attendance and/or participation in the event.
- Submit a draft or rough-cut of all printed or recorded material (brochures, posters, scripts, artwork, trailer graphics, etc.) to the OTS PIO at pio@ots.ca.gov and copy your OTS Coordinator for approval 14 days prior to the production or duplication.
- Space permitting, include the OTS logo, on grant-funded print materials; consult your OTS Coordinator for specifics and format-appropriate logos.
- Contact the OTS PIO or your OTS Coordinator, sufficiently far enough in advance of need, for consultation when deviation from any of the above requirements might be contemplated

C. Phase 3 – Data Collection & Reporting (Throughout Grant Year)

1. Prepare and submit invoice claims (due January 30, April 30, July 30, and October 30)

2. Prepare and submit Quarterly Performance Reports (QPR) (due January 30, April 30, July 30, and October 30)
- Collect and report quarterly, appropriate data that supports the progress of goals and objectives.
- Provide a brief list of activity conducted, procurement of grant-funded items, and significant media activities. Include status of grant-funded personnel, status of contracts, challenges, or special accomplishments.
- Provide a brief summary of quarterly accomplishments and explanations for objectives not completed or plans for upcoming activities.
- Collect, analyze and report statistical data relating to the grant goals and objectives.

4. METHOD OF EVALUATION

Using the data compiled during the grant, the Grant Director will complete the "Final Evaluation" section in the fourth/final Quarterly Performance Report (QPR). The Final Evaluation should provide a brief summary of the grant's accomplishments, challenges and significant activities. This narrative should also include whether goals and objectives were met, exceeded, or an explanation of why objectives were not completed.

5. ADMINISTRATIVE SUPPORT

This program has full administrative support, and every effort will be made to continue the grant activities after grant conclusion.

FUND NUMBER	CATALOG NUMBER (CFDA)	FUND DESCRIPTION	TOTAL AMOUNT
164AL-21	20.608	Minimum Penalties for Repeat Offenders for Driving While Intoxicated	$35,000.00
402PT-21	20.600	State and Community Highway Safety	$22,500.00

COST CATEGORY	FUND NUMBER	UNIT COST OR RATE	UNITS	TOTAL COST TO GRANT
A. PERSONNEL COSTS				
Positions and Salaries **Straight Time**				$0.00
Overtime				
DUI/DL Checkpoints	164AL-21	$9,500.00	2	$19,000.00
DUI Saturation Patrols	164AL-21	$900.00	12	$10,800.00
Traffic Enforcement	402PT-21	$905.00	9	$8,145.00
Distracted Driving	402PT-21	$900.00	5	$4,500.00
Motorcycle Safety	402PT-21	$900.00	3	$2,700.00
Pedestrian and Bicycle Enforcement	402PT-21	$1,100.00	2	$2,200.00
Collaborative Traffic Enforcement	402PT-21	$900.00	3	$2,700.00
Collaborative DUI Enforcement	164AL-21	$900.00	3	$2,700.00
Category Sub-Total				$52,745.00
B. TRAVEL EXPENSES				
In State Travel	402PT-21	$2,255.00	1	$2,255.00
				$0.00
Category Sub-Total				$2,255.00
C. CONTRACTUAL SERVICES				
				$0.00
Category Sub-Total				$0.00
D. EQUIPMENT				
				$0.00
Category Sub-Total				$0.00
E. OTHER DIRECT COSTS				
DUI Checkpoint Supplies	164AL-21	$1,500.00	1	$1,500.00
PAS Device/Calibration equipment	164AL-21	$1,000.00	1	$1,000.00
Category Sub-Total				$2,500.00
F. INDIRECT COSTS				
				$0.00
Category Sub-Total				$0.00
GRANT TOTAL				**$57,500.00**

BUDGET NARRATIVE
PERSONNEL COSTS DUI/DL Checkpoints - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.
DUI Saturation Patrols - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.
Traffic Enforcement - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.
Distracted Driving - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.
Motorcycle Safety - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.
Pedestrian and Bicycle Enforcement - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.
Collaborative Traffic Enforcement - Overtime for grant funded Collaborative Traffic Enforcement operations conducted by appropriate department personnel
Collaborative DUI Enforcement - Overtime for grant funded Collaborative DUI Enforcement operations conducted by appropriate department personnel
TRAVEL EXPENSES In State Travel - Costs are included for appropriate staff to attend conferences and training events supporting the grant goals and objectives and/or traffic safety. Local mileage for grant activities and meetings is included. Anticipated travel may include Lifesavers 2020 Conference. All conferences, seminars or training not specifically identified in the Budget Narrative must be approved by OTS. All travel claimed must be at the agency approved rate. Per Diem may not be claimed for meals provided at conferences when registration fees are paid with OTS grant funds.
CONTRACTUAL SERVICES -
EQUIPMENT -
OTHER DIRECT COSTS DUI Checkpoint Supplies - On-scene supplies needed to conduct sobriety checkpoints. Costs may include 28" traffic cones, MUTCD compliant traffic signs, MUTCD compliant high visibility vests (maximum of 10), traffic counters (maximum of 2), generator, gas for generators, lighting, reflective banners, electronic flares, PAS device supplies, heater, propane for heaters, fan, anti-fatigue mats, and canopies. Additional items may be purchased if approved by OTS. The cost of food and beverages will not be reimbursed.
PAS Device/Calibration equipment - Pas Device and Calibration equipment
INDIRECT COSTS -
STATEMENTS/DISCLAIMERS Program Income default statement: There will be no program income generated from this grant. Enforcement Grant Quota Disclaimer:

Nothing in this “agreement” shall be interpreted as a requirement, formal or informal, that a particular law enforcement officer issue a specified or predetermined number of citations in pursuance of the goals and objectives here under.

CERTIFICATIONS AND ASSURANCES
HIGHWAY SAFETY GRANTS
(23 U.S.C. CHAPTER 4 AND SEC. 1906, PUB. L. 109-59, AS AMENDED)

Failure to comply with applicable Federal statutes, regulations, and directives may subject Grantee Agency officials to civil or criminal penalties and/or place State in a high-risk grantee status in accordance with 49 CFR 18.12.

The Officials named on the grant agreement signature page, that the Grantee Agency complies with all applicable Federal statutes, regulations, and directives and State rules, guidelines, policies and laws in effect with respect to the periods for which it receives grant funding. Applicable provisions include but are not limited to the following:

GENERAL REQUIREMENTS

- 23 U.S.C. Chapter 4 – Highway Safety Act of 1966, as amended
- 2 CFR part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 49 CFR Part 18- Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- 23 CFR part 1300 – Uniform Procedures for State Highway Safety Grant Programs

NONDISCRIMINATION
(applies to subrecipients as well as States)

The State highway safety agency will comply with all Federal statutes and implementing regulations relating to nondiscrimination ("Federal Nondiscrimination Authorities"). These include but are not limited to:

• **Title VI of the Civil Rights Act of 1964** (42 U.S.C. 2000d *et seq.,* 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin) and 49 CFR part 21;

• **The Uniform Relocation Assistance and Real Property Acquisition Policies** Act of 1970, (42 U.S.C. 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

• **Federal-Aid Highway Act of 1973**, (23 U.S.C. 324 *et seq.),* **and Title IX of the Education Amendments of 1972**, as amended (20 U.S.C. 1681-1683 and 1685-1686) (prohibit discrimination on the basis of sex);

• **Section 504 of the Rehabilitation Act of 1973**, (29 U.S.C. 794 *et seq.),* as amended, (prohibits discrimination on the basis of disability) and 49 CFR part 27;

• **The Age Discrimination Act of 1975**, as amended, (42 U.S.C. 6101 *et seq.),* (prohibits discrimination on the basis of age);

• **The Civil Rights Restoration Act of 1987**, (Pub. L. 100-209), (broadens scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal aid recipients, subrecipients and contractors, whether such programs or activities are Federally-funded or not);

• **Titles II and III of the Americans with Disabilities Act** (42 U.S.C. 12131-12189) (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing) and 49 CFR parts 37 and 38;

• **Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations** (prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations); and

• **Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency** (guards against Title VI national origin discrimination/discrimination because of limited English proficiency (LEP) by ensuring that funding recipients take reasonable steps to ensure that LEP persons have meaningful access to programs (70 FR 74087-74100).

The State highway safety agency—

• Will take all measures necessary to ensure that no person in the United States shall, on the grounds of race, color, national origin, disability, sex, age, limited English proficiency, or membership in any other class protected by Federal Nondiscrimination Authorities, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any of its programs or activities, so long as any portion of the program is Federally-assisted;

• Will administer the program in a manner that reasonably ensures that any of its subrecipients, contractors, subcontractors, and consultants receiving Federal financial assistance under this program will comply with all requirements of the Non-Discrimination Authorities identified in this Assurance;

• Agrees to comply (and require its subrecipients, contractors, subcontractors, and consultants to comply) with all applicable provisions of law or regulation governing US DOT's or NHTSA's access to records, accounts, documents, information, facilities, and staff, and to cooperate and comply with any program or compliance reviews, and/or complaint investigations conducted by US DOT or NHTSA under any Federal Nondiscrimination Authority;

• Acknowledges that the United States has a right to seek judicial enforcement with regard to any matter arising under these Non-Discrimination Authorities and this Assurance;

• Agrees to insert in all contracts and funding agreements with other State or private entities the following clause:

"During the performance of this contract/funding agreement, the contractor/funding recipient agrees—

a. To comply with all Federal nondiscrimination laws and regulations, as may be amended from time to time;

b. Not to participate directly or indirectly in the discrimination prohibited by any Federal non-discrimination law or regulation, as set forth in appendix B of 49 CFR part 2l and herein;

c. To permit access to its books, records, accounts, other sources of information, and its facilities as required by the State highway safety office, US DOT or NHTSA;

d. That, in event a contractor/funding recipient fails to comply with any nondiscrimination provisions in this contract/funding agreement, the State highway safety agency will have the right to impose such contract/agreement sanctions as it or NHTSA determine are appropriate, including but not limited to withholding payments to the contractor/funding recipient under the contract/agreement until the contractor/funding recipient complies; and/or cancelling, terminating, or suspending a contract or funding agreement, in whole or in part; and

e. To insert this clause, including paragraphs (a) through (e), in every subcontract and subagreement and in every solicitation for a subcontract or sub-agreement, that receives Federal funds under this program.

POLITICAL ACTIVITY (HATCH ACT)
(applies to subrecipients as well as States)

The state will comply with provisions of the Hatch Act (5 U.S.C. 1501-1508), which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

CERTIFICATION REGARDING FEDERAL LOBBYING
(applies to subrecipients as well as States)

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

3. The undersigned shall require that the language of this certification be included in the award documents for all sub-award at all tiers (including subcontracts, subgrants, and contracts under grant, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

RESTRICTION ON STATE LOBBYING
(applies to subrecipients as well as States)
None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION
(applies to subrecipients as well as States)
Instructions for Primary Tier Participant Certification (States)
1. By signing and submitting this proposal, the prospective primary tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1200.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective primary tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary tier participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default or may pursue suspension or debarment.

4. The prospective primary tier participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary tier participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms *covered transaction, civil judgment, debarment, suspension, ineligible, participant, person, principal, and voluntarily excluded*, as used in this clause, are defined in 2 CFR parts 180 and 1200. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1200.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (https://www.sam.gov/).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency may terminate the transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Tier Covered Transactions

(1) The prospective primary tier participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the prospective primary tier participant is unable to certify to any of the Statements in this certification, such prospective participant shall attach an explanation to this proposal.
Instructions for Lower Tier Participant Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1200.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms *covered transaction, civil judgment, debarment, suspension, ineligible, participant, person, principal, and voluntarily excluded*, as used in this clause, are defined in 2 CFR parts 180 and 1200. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled “Instructions for Lower Tier Participant Certification” including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1200.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (https://www.sam.gov/).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

BUY AMERICA ACT
(applies to subrecipients as well as States)
The State and each subrecipient will comply with the Buy America requirement (23 U.S.C. 313) when purchasing items using Federal funds. Buy America requires a State, or subrecipient, to purchase with Federal funds only steel, iron and manufactured products produced in the United States, unless the Secretary of Transportation determines that such domestically produced items would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactory quality, or that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. In order to use Federal funds to purchase foreign produced items, the State must submit a waiver request that provides an adequate basis and justification for approval by the Secretary of Transportation.

PROHIBITION ON USING GRANT FUNDS TO CHECK FOR HELMET USAGE
(applies to subrecipients as well as States)
The State and each subrecipient will not use 23 U.S.C. Chapter 4 grant funds for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.

POLICY ON SEAT BELT USE
In accordance with Executive Order 13043, Increasing Seat Belt Use in the United States, dated April 16, 1997, the Grantee is encouraged to adopt and enforce on-the-job seat belt use policies and programs for its employees when operating company-owned, rented, or personally-owned vehicles. The National Highway Traffic Safety Administration (NHTSA) is responsible for providing leadership and guidance in support of this Presidential initiative. For information and resources on traffic safety programs and policies for employers, please contact the Network of Employers for Traffic Safety (NETS), a public-private partnership dedicated to improving the traffic safety practices of employers and employees. You can download information on seat belt programs, costs of motor vehicle crashes to employers, and other traffic safety initiatives at www.trafficsafety.org. The NHTSA website (www.nhtsa.gov) also provides information on statistics, campaigns, and program evaluations and references.

POLICY ON BANNING TEXT MESSAGING WHILE DRIVING
In accordance with Executive Order 13513, Federal Leadership On Reducing Text Messaging While Driving, and DOT Order 3902.10, Text Messaging While Driving, States are encouraged to adopt and enforce workplace safety policies to decrease crashes caused by distracted driving, including policies to ban text messaging while driving company-owned or rented vehicles, Government-owned, leased or rented vehicles, or privately-owned vehicles when on official Government business or when performing any work on or behalf of the Government. States are also encouraged to conduct workplace safety initiatives in a manner commensurate with the size of the business, such as establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving, and education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

INSTRUCTIONS FOR ADDING OR UPDATING GEMS USERS

1. Each agency is allowed a total of **FIVE (5) GEMS Users**.
2. GEMS Users listed on this form will be authorized to login to GEMS to complete and submit Quarterly Performance Reports (QPRs) and reimbursement claims.
3. Complete the form if adding, removing or editing a GEMS user(s).
4. The Grant Director must sign this form and return it with the Grant Agreement.

GRANT DETAILS	
Grant Number:	PT21151
Agency Name:	Milpitas Police Department
Grant Title:	Selective Traffic Enforcement Program (STEP)
Agreement Total:	$57,500.00
Authorizing Official:	Armando Corpuz
Fiscal Official:	Walter Rossmann
Grant Director:	Joseph Heylen

CURRENT GEMS USER(S)

1. Joseph Heylen
Title: Sergeant
Phone: (408) 586-2435
Email: jheylen@ci.milpitas.ca.gov
Media Contact: Yes

2. Gabrielle Tsang
Title: Senior Accountant
Phone: (408) 586-3131
Email: gtsang@ci.milpitas.ca.gov
Media Contact: No

3. Yuling Wang
Title: Accountant
Phone: (408) 586-3124
Email: ywang@ci.milpitas.ca.gov
Media Contact: No

Complete the below information if adding, removing or editing a GEMS user(s)

GEMS User 1 Add/Change ☑ Remove Access ☐ Abbie Serrano	Add as a media contact? Yes ☐ No ☑
Name	Job Title
aserrano@ci.milpitas.ca.gov	Police Lieutenant 408-586-241
Email address	Phone number
GEMS User 2 Add/Change ☐ Remove Access ☐	Add as a media contact? Yes ☐ No ☐
Name	Job Title
Email address	Phone number
GEMS User 3 Add/Change ☐ Remove Access ☐	Add as a media contact? Yes ☐ No ☐
Name	Job Title
Email address	Phone number
GEMS User 4 Add/Change ☐ Remove Access ☐	Add as a media contact? Yes ☐ No ☐
Name	Job Title
Email address	Phone number
GEMS User 5 Add/Change ☐ Remove Access ☐	Add as a media contact? Yes ☐ No ☐
Name	Job Title
Email address	Phone number
Form completed by: Abbie Serrano Abbie Serrano (Jul 28, 2020 17:41 PDT)	Date: Jul 28, 2020

As a signatory I hereby authorize the listed individual(s) to represent and have GEMS user access.

Joseph A. Heylen Joseph A. Heylen (Aug 6, 2020 06:49 PDT)	Joseph A. Heylen
Signature	Name
Aug 6, 2020	Grant Director
Date	Title

Grant Agreement - PT21151

Final Audit Report 2020-08-19

Created:	2020-07-27
By:	Trysh Strayhand (trysh.strayhand@ots.ca.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAARynarnDGAkCjItKgP-CofrjWWiF3NtWV

"Grant Agreement - PT21151" History

Document created by Trysh Strayhand (trysh.strayhand@ots.ca.gov)
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2020-08-18 - 2:17:34 PM GMT- IP address: 13.52.101.64

Document e-signed by Armando Corpuz (acorpuz@ci.milpitas.ca.gov)
Signature Date: 2020-08-18 - 7:12:39 PM GMT - Time Source: server- IP address: 50.59.22.2

Document emailed to Carolyn Vu (carolyn.vu@ots.ca.gov) for signature
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Document e-signed by Carolyn Vu (carolyn.vu@ots.ca.gov)
Signature Date: 2020-08-18 - 7:14:59 PM GMT - Time Source: server- IP address: 134.186.23.239

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2020-08-18 - 7:15:01 PM GMT

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Signed document emailed to Carolyn Vu (carolyn.vu@ots.ca.gov), Trysh Strayhand (trysh.strayhand@ots.ca.gov), Walter Rossmann (wrossmann@ci.milpitas.ca.gov), Armando Corpuz (acorpuz@ci.milpitas.ca.gov), and 3 more
2020-08-19 - 9:37:03 PM GMT

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From*		To*	
	Account	Amount	Account	Amount
Check one: ☒ **Budget Appropriation** ❒ **Budget Transfer**	**267-3557**	**$57,500**	**267-7224113**	**$57,500**

Adopt a Resolution to Authorize the Chief of Police to execute the Grant Agreement with the Office of Traffic Safety to Accept the FY 2021 Office of Traffic Safety Selective Traffic Enforcement Program Grant and approve a budget appropriation in the amount of $57,500.00

Background:
The Office of Traffic Safety (OTS) administers the Selective Traffic Enforcement Program (STEP) that offers grant funds from the California Office of Traffic Safety to reimburse law enforcement agencies for overtime expenditures specifically directed toward traffic safety operations.

The grant funding is directed at conducting best practice strategies to reduce the number of persons killed and injured in traffic related collisions involving impaired driving and other primary collision factors. The funded strategies may include enforcement operations focusing on impaired driving, distracted driving, nighttime seatbelt use, motorcycle safety, and pedestrian and bicycle safety. Operations are conducted in areas with a disproportionate number of traffic collisions. Other funded strategies may include public education and police department staff training.

The City of Milpitas has been approved for a grant of $57,500.00 to conduct driving under the influence (DUI) saturation patrols, DUI checkpoints, traffic enforcement operations, distracted driving enforcement, motorcycle safety, pedestrian and bicycle safety, public education, equipment purchases, and training on an overtime basis in conjunction with STEP between October 1, 2020 and September 30, 2021.

Analysis:
The City of Milpitas is not required to accept the OTS STEP grant funding; however, traffic safety is a paramount concern in the City of Milpitas and this funding will help address traffic safety issues throughout the City. If accepted, the City of Milpitas must agree to utilize the funding for enforcement, public education, and/or training related to specific traffic safety issues on an overtime basis. Examples of specific issues include but are not limited to: DUI, distracted driving, seat belt violation, and pedestrian/bicycle safety. Enforcement and public education are important components to reducing collisions and saving lives. The spending period for this funding begins October 1, 2020 and concludes on September 30, 2021.
Policy Alternative:
Alternative 1: Do not accept the overtime reimbursement funding from the FY 2021 OTS STEP grant.

Pros: There are no identified benefits to this alternative.
Cons: The Police Department would not be able to increase overtime enforcement, education, or training towards traffic safety.
Reason not recommended: The FY 2021 OTS STEP grant award does not require matching funds nor are there any requirements that result in a negative impact. The City will receive full reimbursement for overtime expenses.

Fiscal Impact:
A budget appropriation is needed for the overtime expenditures in the Police Department's operating budget. The overtime expenditures will be reimbursed by the OTS STEP grant funding.

California Environmental Quality Act: N/A
N/A

Recommendations:

1) Adopt a Resolution authorizing the Chief of Police to execute the Grant Agreement with the Office of Traffic Safety to accept the grant for the 2021 Selective Traffic Enforcement Program (STEP).
2) Approve a budget appropriation in the amount of $57,500 into the Police Department overtime budget as a result of acceptance of the 2021 STEP grant.

Attachments:
1. Resolution
2. OTS STEP Grant 2021 Agreement
3. Budget change form

☐ **Check if City Council Approval required.** **Meeting Date**: September 15, 2020

Requested by:	**Department Head:** Armando Corpuz	**Date:** September 15, 2020
Reviewed by:	**Finance Director:** Walter C. Rossmann	**Date:** September 15, 2020

Date approved by City Council, if required: **Confirmed by:**

FI/24786/V **Form 30-222 (Rev. 1/92)**

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Adopt a Resolution to Approve Project Plans & Specifications; Reject a Bid Protest from Pacific Electric Contracting, Inc.; Award a Construction Contract to the Bear Electrical Solutions, Inc. in the amount of $418,150 for the Enhanced Crosswalk Striping & Beacons/Radar Speed Feedback Signage, Projects No. 3454 and No. 3458; Authorize City Manager to Execute the Construction Contract; and Authorize the Engineering Director/City Engineer to Negotiate and Execute Contract Change Orders**
Category:	Consent Calendar-Community Development
Meeting Date:	10/6/2020
Staff Contact:	Steve Erickson, City Engineer, 408-586-3301
Recommendation:	Adopt a Resolution approving project plans & specifications; reject a bid protest from Pacific Electric Contracting, Inc.; award a construction contract to the lowest responsible bidder submitting a responsive bid, Bear Electrical Solutions, Inc., in the amount of $418,150 for the Enhanced Crosswalk Striping & Beacons/Radar Speed Feedback Signage, Projects No. 3454 and No. 3458; Authorize the City Manager to execute the contract with Bear; and authorize the Engineering Director/City Engineer to negotiate and execute contract change orders in an aggregate amount not to exceed $63,000.

Background:

Project No. 3454 - Enhanced Crosswalk Striping & Beacons and Project No. 3458 - Radar Speed Feedback Signage ("Project") are in the approved 2020-2025 Capital Improvement Program. Project No. 3454 - Enhanced Crosswalk Striping & Beacons provides high-visibility warning flashing beacons and enhanced crosswalk striping to alert motorist of pedestrians crossing a crosswalk. Project No. 3458 - Radar Speed Feedback Signage provides electronic signs that will display vehicle speed as motorists' approach to bring motorist awareness when traveling over the posted speed limit. The two projects have been combined into one construction package for traffic calming measures to achieve more favorable bid pricing. The Project provides for the design and construction of roadside traffic calming measures at various locations to improve safety and accessibility for motorists, cyclists, and pedestrians. These traffic calming measures include installation of rectangular rapid flashing beacon systems (RRFB) and radar speed feedback signs (RSFS) on new and existing poles. Enhanced crosswalk striping accompanying the RRFB were recently installed as part of an earlier project.

The Project Plans and Specifications are now complete and ready for City Council approval and the Project title sheet (**Attachment 2**) is included in the Council's agenda packet. The complete full-size set of plans and specifications are available electronically upon request to the City Engineer.

The following are the 14 Project locations where flashing beacons and/or radar speed back signage will be installed:

Rectangular Rapid Flashing Beacons (RRFB)
Arizona Ave near Rose Drive (Alternate Bid Item)

Radar Speed Feedback Signs (RSFS)
Dixon Road near Conway Street

Dixon Road at Conway Street (Alternate Bid Item)
Fanyon Street near Kennedy Drive
Kennedy Drive at Simas Drive
N. Abbott Ave near Hall Memorial Park
Roswell Drive at Ashland Drive (Alternate Bid Item)
Washington Drive at Escuela Parkway
Yosemite Drive near Carnegie Drive
N. Abbott Ave near Hall Memorial Park
S. Main Street near S. Abel Street
Temple Drive near Wylie Drive
Yosemite Drive near Merryhill School
Washington Drive near Marshall Pomeroy School

The Project Bid Schedule includes the Base Bid work and three Add Alternate Bid items for the installation of rapid flashing beacon systems at three additional locations depending on bid pricing and available Project funding. The Engineer's Construction Estimate for the Base Bid work is $640,000 and the estimated cost to install the three Add Alternate Bid Items is $204,000. The Project specifications require the determination of the lowest bid to be solely based on the Base Bid amount.

The Project was advertised on digital construction trade publications on August 21, 2020 and in the Milpitas Post on August 28, 2020 in accordance with the bidding requirements under the Uniform Public Construction Cost Accounting Act. Bid opening was on September 11, 2020 and seven sealed bid proposals were received.

Analysis:
The following is a tabulation of bidders and the bids received. The Summary of Bid Results is shown as follows and is included in the agenda as **Attachment 3**.

Bidder	Total Base Bid	Total Alternative Bids	Total Bid Amount (Base + Alternative)
Engineer's Estimate	$640,000	$204,000	$844,000
Bear Electrical Solutions, Inc.	**$332,200**	**$85,950**	**$418,150**
Pacific Electric Contracting Inc.	$344,341	$55,956	$400,297
Tennyson Electric, Inc.	$388,975	$108,625	$497,600
Gruendl Inc. DBA Ray's Electric	$425,500	$62,000	$487,500
Brown & Fesler, Inc.	$505,323	$138,882	$644,205
Columbia Electric, Inc.	$507,085	$105,400	$612,485
St. Francis Electric, LLC	$558,950	$119,500	$678,450

The Base Bid prices submitted by bidders vary between 12% to 48% under the Engineer's Estimate. The range of variation in bid pricing from the Engineer's Estimate is likely due to the current construction market which has slowed as a result of the COVID-19 pandemic. The lowest responsible bidder submitting a responsive bid is Bear Electrical Solutions, Inc., with a Base Bid amount of $332,200.

One bid protest from Pacific Electric Contracting, Inc (**Attachment 5**) was received on September 15, 2020, and was reviewed by the City Attorney. The bid protest submitted by Pacific Electric Contracting, Inc. was determined to be meritless, and written notice of staff's intent to recommend rejection of the bid protest to the City Council was delivered to Pacific Electric Contracting, Inc. on or about September 15, 2020 ("Notice") (**Attachment 6**). Staff recommends the City Council reject the bid protest from Pacific Electric Contracting, Inc. as meritless for the reasons specified in the Notice.

Staff recommends the City Council adopt a Resolution (**Attachment 1)** to approve the plans and specifications for the Project, reject the bid protest from Pacific Electric Contracting, Inc, and award a construction contract for the Base Bid and all three Add Alternate Bid items to Bear Electrical Solutions, Inc. for a total contract amount of $418,150. There is sufficient funding available in the Project budget to award this contract and no additional funding appropriation is required.

The construction contingency established for this Project is $63,000, which is 15% of the total contract value. The change order authority is not anticipated to exceed this amount, and the Project would not require additional appropriation. As previously approved for the successful completion of recent projects with tight

completion schedules, staff is requesting the use of the same change order policy (**Attachment 4)**. This policy allows for a timely completion of the Project, while addressing the need to respond swiftly to construction conditions and approve necessary change orders in order to limit potential claims or risks to the City.

Policy Alternative:
Alternative: Deny approval of Project plans and specifications and not award the construction contract for the installation of radar speed feed-back signs and enhanced crosswalk striping.

Pros: None.

Cons: A denial would cause delay in completing the traffic calming measures and would prevent improvements in safety and accessibility for motorists, cyclists, and pedestrians.

Reason not Recommended: Staff recommends the award of the construction contract to allow implementation of improved safety measures near schools and other locations where enhanced measure will benefit pedestrians.

Fiscal Impact:
Adequate funds are available in the Project budget and no additional funding appropriation is required.

As of 8/31/2020, uncommitted balance to the two projects procured as part of the Project are as follows:

CIP 3454	$575,358
CIP 3458	$400,000
Total Balance Available	**$975,358**

Summary of Estimated Construction Cost:

Base Bid Amount	$332,200
Total Alternate Bid Amount	$85,950
15% Construction Contingency	$63,000
Administration and Inspection	$100,000
Total	**$581,150**

There are sufficient funds available to award the construction contract.

California Environmental Quality Act:
Project is exempt under Section 15301 (Existing Facilities), Section 15302 (Replacement of Reconstruction), and 15303 (New Construction or Conversion of Small Structures) of the CEQA guidelines. A Notice of Exemption (NOE) will be filed with the County of Santa Clara following the approval and contract award.

Recommendations:
Adopt a resolution to:

1. Approve project plans and specifications;
2. Reject a bid protest from Pacific Electric Contracting, Inc;
3. Award the construction contract to the lowest responsible bidder submitting a responsive bid, Bear Electrical Solutions, Inc., for the Base Bid and all Add Alternate Bid Items on the project for a total contract amount of $418,150;
4. Authorize the City Manager to execute the construction contract with Bear Electrical Solutions, Inc.;
5. Authorize the Engineering Director/City Engineer to negotiate and execute contract change order(s) in an aggregate amount not to exceed $63,000 for the project.

Attachments:
1: Resolution
2: Title Sheet & Location Map
3: Bid Results

4: Change Order Policy
5: Bid Protest from Pacific Electric Contracting, Inc.
6: Notice of Intent to Reject Bid Protest from City

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING THE PROJECT PLANS AND SPECIFICATIONS, REJECTING A BID PROTEST FROM PACIFIC ELECTRIC CONTRACTING, INC., AWARDING A CONSTRUCTION CONTRACT AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT WITH THE LOWEST RESPONSIBLE BIDDER SUBMITTING A RESPONSIVE BID, BEAR ELECTRICAL SOLUTIONS, INC. , IN THE AMOUNT OF $418,150 FOR THE ENHANCED CROSSWALK STRIPING & BEACONS / RADAR SPEED FEEDBACK SIGNAGE, CITY PROJECT NOS. 3454 / 3458, AND AUTHORIZING THE ENGINEERING DIRECTOR/CITY ENGINEER TO NEGOTIATE AND EXECUTE CONTRACT CHANGE ORDER(S) IN AN AGGREGATE AMOUNT NOT TO EXCEED $63,000 FOR THE PROJECT

WHEREAS, the Enhanced Crosswalk Striping & Beacons / Radar Speed Feedback Signage, City Project Nos. 3454 / 3458 (the "Project"), provides construction of traffic calming measures in the form of rectangular rapid flashing beacon systems and/or radar speed feedback signs on new and existing poles at the following locations:

Rectangular Rapid Flashing Beacons	**Radar Speed Feedback Signs**
Arizona Ave near Rose Drive (Alternate Bid Item)	Dixon Road near Conway Street
Dixon Road at Conway Street (Alternate Bid Item)	N. Abbott Ave near Hall Memorial Park
Fanyon Street near Kennedy Drive	S. Main Street near S. Abel Street
Kennedy Drive at Simas Drive	Temple Drive near Wylie Drive
N. Abbott Ave near Hall Memorial Park	Yosemite Drive near Merryhill School
Roswell Drive at Ashland Drive (Alternate Bid Item)	Washington Drive near Marshall Pomeroy School
Washington Drive at Escuela Parkway	
Yosemite Drive near Carnegie Drive	

WHEREAS, the Engineer's Estimate for the Project Base Bid items and Alternate Bid items is $640,000 and $204,000, respectively; and

WHEREAS, the Project specifications require the determination of the lowest bid to be solely based on the Base Bid amount; and

WHEREAS, the Project was bid in accordance with the bidding requirements under the Uniform Public Construction Cost Accounting Act; and

WHEREAS, on September 11, 2020, seven sealed bid proposals were received. The base bid pricing ranged from $332,200 to $558,950; and

WHEREAS, one bid protest from Pacific Electric Contracting, Inc., was filed with the City within five (5) days of the bid opening as set forth in the Project specifications; and

WHEREAS, the bid protest from Pacific Electric Contracting, Inc., was deemed meritless and notice of intent to reject the bid protest was delivered to Pacific Electric Contracting, Inc. ("Notice"); and

WHEREAS, the lowest responsible bidder submitting a responsive bid is Bear Electrical Solutions, Inc., in the base bid amount of $332,200; and

WHEREAS, sufficient funds are available in the Project budget to award the Base Bid items and Alternate Bid items under Bear Electrical Solutions, Inc.'s bid in the amounts of $332,200 and $85,950, respectively; and

WHEREAS, staff recommends the City Council approve the Project plans and specifications; and

WHEREAS, staff recommends the City Council reject the bid protest from Pacific Electric Contracting, Inc., as meritless for the reasons specified in the Notice and award a construction contract for the Base Bid and all Alternate Bid items to Bear Electrical Solutions, Inc., the lowest responsible bidder submitting a responsive bid, and authorize the City Manager to execute a contract in the total amount of $418,150 in accordance with State law; and

WHEREAS, staff recommends the City Council authorize the Director of Engineering/City Engineer to negotiate and execute change order(s) in an amount not to exceed $63,000; fifteen percent (15%) of the total contract value, due to the Project's tight completion schedule and staff's capability to respond swiftly to unanticipated construction conditions to limit potential claims or risk to the City.

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

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

2. The City Council hereby rejects the bid protest from Pacific Electric Contracting, Inc., as meritless for the reasons specified in the Notice.

3. The City Council hereby awards the construction contract to and authorizes the City Manager to execute the contract and related documents with the lowest responsible bidder submitting a responsive bid, Bear Electrical Solutions, Inc., for the Base Bid and all Alternate Bid items in the total bid amount of $418,150 for the Project.

4. The Director of Engineering/City Engineer is hereby authorized to negotiate and execute contract change order(s) in an aggregate amount not to exceed $63,000 for the Project.

PASSED AND ADOPTED this _____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Rich Tran, Mayor

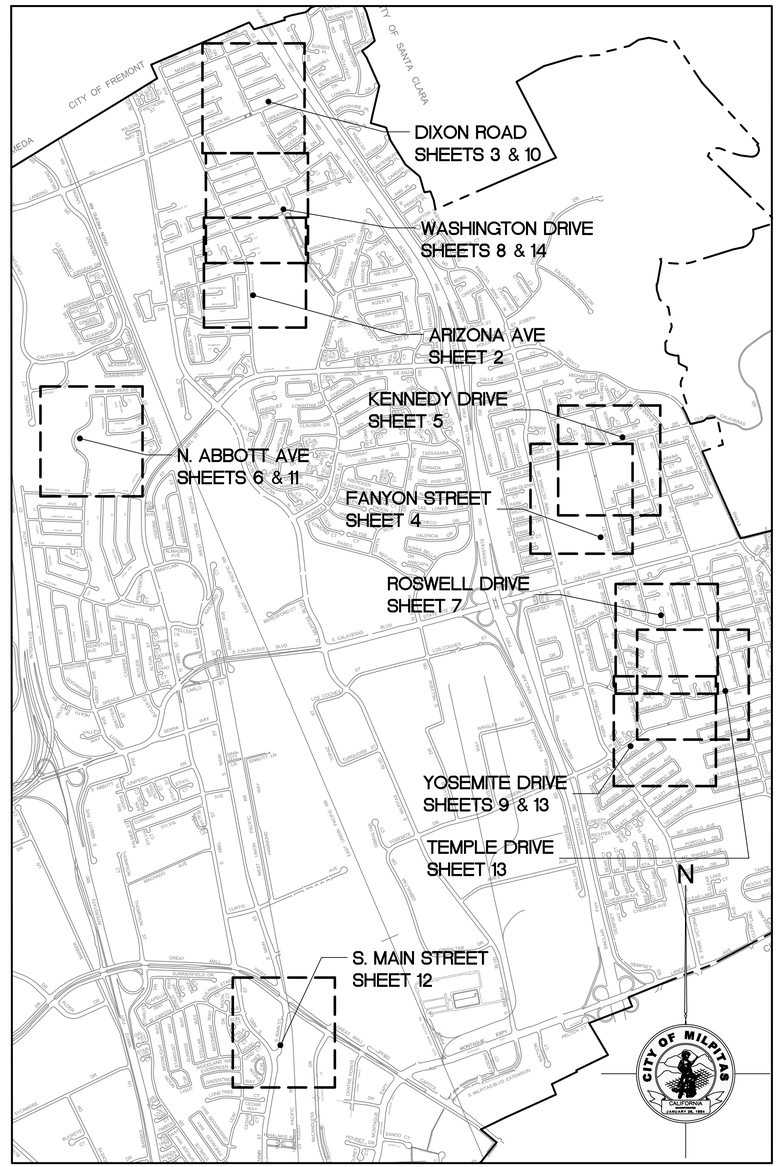
APPROVED AS TO FORM:

_____
Christopher J. Diaz, City Attorney

CITY OF MILPITAS
ENHANCED CROSSWALK STRIPING AND BEACONS / RADAR SPEED FEEDBACK SIGNAGE
PROJECT NO. 3454 / 3458

GENERAL NOTES:

1. ALL MATERIAL AND WORKMANSHIP SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE APPROVED PLANS, SPECIFICATIONS, LATEST EDITION OF STANDARDS AND ORDINANCES OF THE CITY OF MILPITAS AND THE LATEST STATE STANDARD SPECIFICATIONS. STANDARD DRAWINGS AND DETAILS ARE AVAILABLE AT THE ENGINEERING DEPARTMENT, 408-586-3300. THE CONTRACTOR SHALL KEEP & MAKE AVAILABLE A COPY OF THE APPROVED PLANS & SPECIFICATIONS AT THE JOB SITE AT ALL TIMES WHEN WORK IS IN PROGRESS. IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO OBTAIN PERMITS NECESSARY TO PERFORM THE IMPROVEMENTS IN THESE PLANS FROM THE APPROPRIATE AGENCIES AND TO COMPLY WITH THE AGENCIES' REQUIREMENTS. THE CONTRACTOR MUST COMPLY WITH ALL APPLICABLE NATIONAL, STATE AND LOCAL LAWS.
2. CONTRACTOR MUST NOTIFY THE CITY PROJECT INSPECTOR 48 HOURS IN ADVANCE BEFORE STARTING ANY WORK FOR THIS PROJECT.
3. IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO DETERMINE THE EXISTENCE AND LOCATION OF ALL UNDERGROUND UTILITIES. THE CONTRACTOR SHALL NOTIFY UTILITY COMPANIES 48 HOURS IN ADVANCE OF CONSTRUCTION TO FIELD LOCATE UTILITIES, CONTACT UNDERGROUND SERVICE ALERT (USA) AT (800)-642-2444 AND OBTAIN A REFERENCE NUMBER. ANY ADDED COST ON THE PART OF THE CONTRACTOR AS A RESULT OF THE ACTUAL LOCATIONS OF EXISTING UTILITIES BEING DIFFERENT FROM THOSE SHOWN ON THE PLANS SHALL BE BORNE BY THE CONTRACTOR AND ASSUMED INCLUDED IN THE CONTRACT UNIT PRICE.
4. ALL QUANTITIES AND PAY ITEMS ARE AND WILL BE BASED ON ACTUAL FIELD MEASUREMENTS. ALL LOCATIONS OF UTILITY & MONUMENT LIDS & COVER ON PLANS ARE APPROXIMATE AND SHALL BE FIELD LOCATED AND VERIFIED PRIOR TO CONSTRUCTION.
5. CONTRACTOR SHALL FIELD VERIFY ALL DIMENSIONS AND ELEVATIONS PRIOR TO STARTING CONSTRUCTION. ANY CONFLICT WITH THE DRAWINGS OR SPECIFICATIONS SHALL BE IMMEDIATELY BROUGHT TO THE ATTENTION OF THE CITY'S PROJECT ENGINEER.
6. CONTRACTOR SHALL MEET WITH PROJECT INSPECTOR AND SIGN OFF ON QUANTITIES WITHIN 48 HOURS OF COMPLETING EACH IMPROVEMENTS.
7. CONTRACTOR IS RESPONSIBLE FOR VERIFYING ALL QUANTITIES AND SHALL OBTAIN AN APPROVED CHANGE ORDER PRIOR TO EXCEEDING ESTIMATED QUANTITIES.
8. ALL RESPONSIBLE CONTRACTOR REPRESENTATIVES (CONRACTOR'S SUPERINTENDENT AND SUBCONTRACTOR'S SUPERINTENDENT) WILL BE REQUIRED TO ATTEND A PRE-CONSTRUCTION MEETING WHICH WILL BE SCHEDULED BY THE CITY PRIOR TO ISSUANCE OF NOTICE TO PROCEED AND THE COMMENCEMENT OF ANY WORK.
9. DETOUR OF THROUGH TRAFFIC TO NEARBY STREETS WILL NOT BE PERMITTED. CONTRACTOR MUST MAINTAIN AT LEAST ONE THROUGH TRAFFIC LANE, PER TRAVEL DIRECTION, AT ALL TIMES OR MAKE SPECIAL PROVISION TO ALLOW THROUGH TRAFFIC.
10. ALL EXISTING UTILITIES, IMPROVEMENTS, LANDSCAPING AND PROPERTY THAT BECOME DAMAGED DURING CONSTRUCTION SHALL BE COMPLETELY RESTORED TO THE SATISFACTION OF THE CITY ENGINEER, AT CONTRACTOR'S SOLE EXPENSE.
11. SAFETY MEASURES: AT ALL TIMES THE CONTRACTOR SHALL BE SOLELY AND COMPLETELY RESPONSIBLE FOR CONDITIONS OF THE JOB SITE INCLUDING PUBLIC SAFETY, WORKER SAFETY AND PROPERTY, INCLUDING COMPLIANCE WITH REQUIREMENTS AND PERMIT CONDITIONS OF THE STATE OF CALIFORNIA DIVISION OF INDUSTRIAL SAFETY, (THIS REQUIREMENT SHALL APPLY CONTINUOUSLY AND NOT JUST DURING WORKING HOURS) AND FOR ALL NECESSARY INDEPENDENT ENGINEERING REVIEWS OF THE CONDITIONS, THE CITY JOB SITE REVIEW IS NOT INTENDED TO INCLUDE REVIEW OF THE ADEQUACY OF THE CONTRACTOR'S SAFETY MEASURES. WHENEVER THE CONTRACTOR'S OPERATIONS CREATE A CONDITION HAZARDOUS TO TRAFFIC OR PUBLIC, CONTRACTOR SHALL FURNISH, INSTALL AND MAINTAIN APPROPRIATE TRAFFIC SAFETY DEVICES AND SIGNAGE TO PREVENT ACCIDENTS OR DAMAGE OR INJURY TO THE PUBLIC.
12. CONTRACTOR SHALL CONFORM TO ALL APPLICABLE OCCUPATIONAL SAFTEY AND HEALTH STANDARDS AND REGUALTIONS BY THE CITY, STATE AND FEDERAL.
13. HAUL ROUTES SHALL BE ONLY ON THOSE STREETS AS PRE-APPROVED BY THE CITY ENGINEER. THE CONTRACTOR SHALL NOT ALLOW MATERIAL TO BLOW OR SPILL OVER AND UPON SAID ADJACENT, PUBLIC OR PRIVATE PROPERTY WHEN HAULING EARTH, SAND, GRAVEL, STONE, DEBRIS, PAPER, OR ANY SUBSTANCE OVER ANY PUBLIC STREET, ALLEY OR PUBLIC PLACE.
14. ALL SURVEY MONUMENTATIONS SHALL BE PROTECTED AND PERPETUATED IN PLACE. ANY DISTURBED OR COVERED MONUMENTS SHALL BE RESET BY A CALIFORNIA LICENSED LAND SURVEYOR AT THE DIRECTION OF THE CITY ENGINEER, AT THE CONTRACTOR'S SOLE EXPENSE.
15. NO CONSTRUCTION IS PERMITTED ON THE FOLLOWING HOLIDAYS: NEW YEARS DAY, MARTIN LUTHER KING BIRTHDAY, PRESIDENT'S DAY, MEMORIAL DAY, INDEPENDENCE DAY, LABOR DAY, VETERANS DAY, THANKSGIVING DAY, DAY AFTER THANKSGIVING, DAY BEFORE CHRISTMAS, AND CHRISTMAS DAY.
16. CONTRACTOR SHALL COMPLY WITH THE CITY'S NON-POINT SOURCE POLLUTION PREVENTION ORDINANCE AND THE STORM WATER POLLUTION PREVENTION PLAN (SWPPP) AND USE/INSTALLATION OF BEST MANAGEMENT PRACTICES (BMP) FOR THIS PROJECT.
17. CONTRACTOR SHALL MAINTAIN THE PROJECT SITES IN A NEAT AND PROFESSIONAL CONDITION AT ALL TIMES. CONTRACTOR SHALL NOT STORE MATERIALS ON PUBLIC RIGHT OF WAY. CONTRACTOR SHALL REMOVE ALL DEBRIS, MATERIALS AND EQUIPMENT AT THE END OF EACH WORKING DAY.
18. THE CONTRACTOR SHALL PROVIDE TEMPORARY PEDESTRIAN WALKWAYS/PATHS THAT ARE ADA COMPLIANT TO TRAVERSE AROUND WORK AND FOR EVERY PEDESTRIAN RAMP/SIDEWALK SECTION REMOVED.
19. ANY OPERATION THAT CREATES DUST SHALL BE STOPPED IMMEDIATELY IF DUST AFFECTS ADJACENT PROPERTIES. SUFFICIENT WATERING TO CONTROL DUST IS REQUIRED AT ALL TIMES AND A DUST PALLIATIVE MAY BE REQUIRED BY THE CITY ENGINEER. MUD TRACKED ONTO STREETS OR ADJACENT PROPERTIES SHALL BE REMOVED IMMEDIATELY BY THE CONTRACTOR. STREETS SHALL BE SWEPT AT CONTRACTOR'S EXPENSE AS REQUIRED BY THE PROJECT SPECIFICATIONS AND AS DIRECTED BY THE CITY ENGINEER.



PROJECT SITE LOCATION
Not To Scale

GENERAL NOTES:

20. CONTRACTOR SHALL COMPLY WITH THE CITY OF MILPITAS SOUND CONTROL ORDINANCE, THE CONTRACTOR SHALL NOT ENGAGE OR PERMIT OTHERS TO ENGAGE IN ANY CONSTRUCTION RELATED OPERATIONS INCLUDING DELIVERY OF MATERIALS AND/OR EQUIPMENT TO OR FROM THE CONSTRUCTION SITE EXCEPT WITHIN THE HOURS OF 7:00 AM TO 7:00 PM ON WEEKDAYS AND WEEKENDS, UNLESS OTHERWISE SPECIFIED IN SPECIFICATIONS.
21. CONTRACTOR SHALL PROVIDE ADEQUATE TRAFFIC CONTROLS INCLUDING FLAG PERSONS PER SPECIFICATIONS ON CALIFORNIA MUTCD 2014 REVISION 3 (March 9, 2018). CONTRACTOR SHALL SUBMIT A TRAFFIC CONTROL PLAN, SUBJECT TO THE APPROVAL OF THE CITY ENGINEER, PRIOR TO THE START OF WORK WITHIN THE PUBLIC RIGHT OF WAY. THE CITY RESERVES THE RIGHT TO REQUIRE MODIFICATIONS TO THE APPROVED PLAN IN THE FIELD.
22. AT ALL TIMES, THE CONTRACTOR SHALL HAVE A SUFFICIENT NUMBER OF CONES, TEMPORARY SIGNAGE, AND OTHER TRAFFIC CONTROL AND SAFETY DEVICES AT HAND IN ORDER TO SAFELY PROSECUTE THE WORK AND TO DIRECT TRAFFIC INCLUDING BICYCLIST AND PEDESTRIANS AS DETERMINED BY THE CITY ENGINEER.
24. SIDEWALKS AND DRIVEWAYS SHALL NOT BE BLOCKED WITHOUT PRIOR APPROVAL FROM THE CITY ENGINEER.
25. CONTRACTOR'S LICENSE REQUIREMENTS ARE NOTED IN THE CONTRACT SPECIFICATIONS AND NOTICE INVITING BIDS.
26. THE CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD THE OWNER, THE CITY OF MILPITAS AND ITS AUTHORIZED REPRESENTATIVES AND THE ENGINEER HARMLESS FROM ANY AND ALL LIABILITY, REAL OR ALLEGED, IN CONNECTION WITH THE PERFORMANCE OF THE WORK ON THIS PROJECT, EXCEPTING FOR LIABILITY ARISING FROM THE SOLE NEGLIGENCE OF THE OWNER OR THE ENGINEER.
27. UNLESS NOTED OTHERWISE, THERE WILL BE NO STREET CLOSURES. CONTRACTOR MUST MAKE PROVISIONS TO ALLOW FOR THROUGH TRAFFIC AND ACCESS TO ALL DRIVEWAYS. CONTRACTOR MUST STAGE ACCORDINGLY AND NOT REMOVE ANY LARGER AREAS THAN CAN BE CONSTRUCTED AND REOPENED IN A GIVEN DAY.
28. ALL UTILITY BOXES & LID REMOVED AND REPLACED IN CONJUNCTION WITH MISCELLANEOUS CONCRETE SHALL BE INSTALLED TO FINISHED GRADE.
29. THE CITY OF MILPITAS ORDINANCE NO. 240.2, PROHIBITS POTABLE WATER USE FOR CONSTRUCTION ACTIVITIES SUCH AS DUST CONTROL, COMPACTION, AND BUILDING PAD TREATMENT. REFER TO THE LATEST "SOUTH BAY WATER RECYCLING RECYCLED WATER ACCESS POINTS PROGRAM IMPLEMENTATION PLAN" FOR PERMITTING REQUIREMENTS GUIDELINES, AND RESPONSIBLE PERSON TRAINING AND EQUIPMENT CERTIFICATION.
30. "NO PARKING SIGNS" SHALL CONFORM TO CONTRACT SPECIFICATION AND THE CONTRACTOR SHALL POST SIGNS MINIMUM OF 72 HOURS PRIOR TO START OF WORK.

SHEET INDEX:

1	TITLE SHEET
2	RRFB IMPROVEMENTS ON ARIZONA AVE (LOCATION 1) - ADDITIVE ALTERNATE
3	RRFB IMPROVEMENTS ON DIXON ROAD (LOCATION 2) - ADDITIVE ALTERNATE
4	RRFB IMPROVEMENTS ON FANYON STREET (LOCATION 3)
5	RRFB IMPROVEMENTS ON KENNEDY DRIVE (LOCATION 4)
6	RRFB IMPROVEMENTS ON N. ABBOTT AVE (LOCATION 5)
7	RRFB IMPROVEMENTS ON ROSWELL DRIVE (LOCATION 6) - ADDITIVE ALTERNATE
8	RRFB IMPROVEMENTS ON WASHINGTON DRIVE (LOCATION 7)
9	RRFB IMPROVEMENTS ON YOSEMITE DRIVE (LOCATION 8)
10	RSFS IMPROVEMENTS ON DIXON ROAD (LOCATION 9)
11	RSFS IMPROVEMENTS ON N. ABBOTT AVE (LOCATION 10)
12	RSFS IMPROVEMENTS ON S. MAIN STREET (LOCATION 11)
13	RSFS IMPROVEMENTS ON TEMPLE DRIVE (LOCATION 12) & YOSEMITE DRIVE (LOCATION 13)
14	RSFS IMPROVEMENTS ON WASHINGTON DRIVE (LOCATION 14)
15	PROJECT DETAILS
16	CITY STANDARD DETAILS
17	CITY AND CALTRANS STANDARD DETAILS
18	BEST MANAGEMENT PRACTICES

BEFORE EXCAVATING
CALL U. S. A.
UNDERGROUND SERVICE ALERT
1-800-227-2600
48 HOURS BEFORE ALL PLANNED WORK OPERATION

NOTE: CONTRACTOR'S LICENSE
A prime contractor bidding on this project shall possess a Class A or C-10 license from the Contractor's State License Board.

Designer Stamp:
REGISTERED PROFESSIONAL ENGINEER
STEVE M. CHAN
No. TR2493
Exp. 6/30/2022
TRAFFIC
STATE OF CALIFORNIA

Record Drawings

Designer: _____ Date: _____
Public Works Inspector: _____ Date: _____
Utility/Facility Dept. Head: _____ Date: _____
Project Engineer: _____ Date: _____
Public Improvements Initially Accepted by the City Council on: _____ Res. No. _____

Drawn By: LT Date: 08/19/20
Checked By: ____ Date: _____
Designed By: LT Date: 08/19/20

Revisions

Num.	Description	Engr. Aprv.	Date

CITY OF MILPITAS
ENGINEERING DIVISION

ENHANCED CROSSWALK STRIPING AND BEACONS / RADAR SPEED FEEDBACK SIGNAGE
PROJECT NO. 3454 / 3458

TITLE SHEET

RECOMMENDED FOR BIDDING BY: _____ DATE: 8-20-2020
Steve Chan, T.E., E.E., Transportation & Traffic Manager

RECOMMENDED FOR BIDDING BY: Steven Erickson DATE: 8-20-20
Steven P. Erickson, P.E., City Engineer

PROJECT NO. 3454/3458
Rec. Dwg No.
SCALE: N.T.S.
SHEET 1 OF 18

CITY OF MILPITAS

ENGINEERING DIVISION

BID SUMMARY

Project Name: Enhanced Crosswalk Striping & Beacons / Radar Speed Feedback Signage
Project No. : 3454 / 3458
Bid Date: September 11, 2020 at 2:00PM

					Apparent Low Bidder													
			Engineer's Estimate		Bear Electrical Solutions, Inc.		Gruendl Inc. DBA Ray's Electric		St. Francis Electric, LLC		Tennyson Electric, Inc.		Brown & Fesler, Inc.		Pacific Electric Contracting, Inc.		Columbia Electric, Inc.	
Item	**DESCRIPTION**	**Quantity**	**Unit Cost**	**Item Cost**	**Unit Cost**	**Item Cost**	**Unit Cost**	**Item Cost**	**Unit Cost**	**Item Cost**	**Unit Cost**	**Item Cost**	**Unit Cost**	**Item Cost**	**Unit Cost**	**Item Cost**	**Unit Cost**	**Item Cost**
1	**Mobilization**	1 LS	$50,000.00	$50,000.00	$30,000.00	$30,000.00	$46,000.00	$46,000.00	$10,000.00	$10,000.00	$28,500.00	$28,500.00	$10,000.00	$10,000.00	$5,000.00	$5,000.00	$25,000.00	$25,000.00
2	**Traffic Control**	1 LS	$30,000.00	$30,000.00	$34,000.00	$34,000.00	$14,000.00	$14,000.00	$12,000.00	$12,000.00	$34,325.00	$34,325.00	$2,500.00	$2,500.00	$5,000.00	$5,000.00	$25,000.00	$25,000.00
3	**Water Pollution Control Program**	1 LS	$10,000.00	$10,000.00	$1,500.00	$1,500.00	$1,000.00	$1,000.00	$1,250.00	$1,250.00	$1,500.00	$1,500.00	$2,500.00	$2,500.00	$1,000.00	$1,000.00	$5,000.00	$5,000.00
4	**Rectangular Rapid Flashing Beacon (RRFB) System at Fanyon Street [Location 3]**	1 LS	$68,000.00	$68,000.00	$25,800.00	$25,800.00	$21,000.00	$21,000.00	$39,000.00	$39,000.00	$38,900.00	$38,900.00	$45,927.00	$45,927.00	$17,688.00	$17,688.00	$26,185.00	$26,185.00
5	**Rectangular Rapid Flashing Beacon (RRFB) System at Kennedy Drive [Location 4]**	1 LS	$60,000.00	$60,000.00	$22,600.00	$22,600.00	$19,000.00	$19,000.00	$37,700.00	$37,700.00	$32,865.00	$32,865.00	$39,393.00	$39,393.00	$17,028.00	$17,028.00	$19,400.00	$19,400.00
6	**Rectangular Rapid Flashing Beacon (RRFB) System at N. Abbott Avenue [Location 5]**	1 LS	$76,000.00	$76,000.00	$30,000.00	$30,000.00	$24,000.00	$24,000.00	$40,300.00	$40,300.00	$49,950.00	$49,950.00	$51,582.00	$51,582.00	$20,133.00	$20,133.00	$34,600.00	$34,600.00
7	**Rectangular Rapid Flashing Beacon (RRFB) System at Yosemite Drive [Location 8]**	1 LS	$60,000.00	$60,000.00	$26,700.00	$26,700.00	$19,000.00	$19,000.00	$31,100.00	$31,100.00	$31,700.00	$31,700.00	$40,273.00	$40,273.00	$16,438.00	$16,438.00	$18,800.00	$18,800.00
8	**Rectangular Rapid Flashing Beacon (RRFB) System at Washington Drive [Location 7]**	1 LS	$60,000.00	$60,000.00	$32,600.00	$32,600.00	$20,000.00	$20,000.00	$24,000.00	$24,000.00	$31,700.00	$31,700.00	$40,273.00	$40,273.00	$16,498.00	$16,498.00	$22,900.00	$22,900.00
9	**Radar Speed Feedback Sign (RSFS) Assembly on New Pole per Detail 4 [Locations 10, 11]**	2 EA	$20,000.00	$40,000.00	$10,200.00	$20,400.00	$19,000.00	$38,000.00	$27,750.00	$55,500.00	$18,250.00	$36,500.00	$22,670.00	$45,340.00	$16,752.00	$33,504.00	$21,250.00	$42,500.00
10	**Radar Speed Feedback Sign (RSFS) Assembly on Existing Pole per Detail 5 [Locations 9, 10, 12, 13, 14]**	9 EA	$15,000.00	$135,000.00	$9,200.00	$82,800.00	$17,000.00	$153,000.00	$23,500.00	$211,500.00	$8,465.00	$76,185.00	$20,615.00	$185,535.00	$15,478.00	$139,302.00	$19,700.00	$177,300.00
11	**Radar Speed Feedback Sign (RSFS) Trailers**	3 EA	$17,000.00	$51,000.00	$8,600.00	$25,800.00	$23,500.00	$70,500.00	$32,200.00	$96,600.00	$8,950.00	$26,850.00	$14,000.00	$42,000.00	$24,250.00	$72,750.00	$36,800.00	$110,400.00
Total Base Bid			**$640,000.00**		**$332,200.00**		**$425,500.00**		**$558,950.00**		**$388,975.00**		**$505,323.00**		**$344,341.00**		**$507,085.00**	
1A	**Additive Alternate 1A. Rectangular Rapid Flashing Beacon (RRFB) System at Arizona Ave [Location 1]**	1 LS	$68,000.00	$68,000.00	$31,200.00	$31,200.00	$21,000.00	$21,000.00	$40,000.00	$40,000.00	$34,250.00	$34,250.00	$42,727.00	$42,727.00	$18,013.00	$18,013.00	$30,000.00	$30,000.00
2A	**Additive Alternate 2A. Rectangular Rapid Flashing Beacon (RRFB) System at Dixon Road [Location 2]**	1 LS	$68,000.00	$68,000.00	$25,750.00	$25,750.00	$21,000.00	$21,000.00	$43,400.00	$43,400.00	$36,400.00	$36,400.00	$44,833.00	$44,833.00	$20,028.00	$20,028.00	$34,600.00	$34,600.00
3A	**Additive Alternate 3A. Rectangular Rapid Flashing Beacon (RRFB) System at Roswell Drive [Location 6]**	1 LS	$68,000.00	$68,000.00	$29,000.00	$29,000.00	$20,000.00	$20,000.00	$36,100.00	$36,100.00	$37,975.00	$37,975.00	$51,322.00	$51,322.00	$17,915.00	$17,915.00	$40,800.00	$40,800.00
Total Base Bid + Alternate Bids			**$844,000.00**		**$418,150.00**		**$487,500.00**		**$678,450.00**		**$497,600.00**		**$644,205.00**		**$400,297.00**		**$612,485.00**	

List of Sub-Contractors

Description	Bear Electrical Solutions, Inc.	Gruendl Inc. DBA	St. Francis Electric, LLC	Tennyson Electric, Inc.	Brown & Fesler, Inc.	Pacific Electric Contracting, Inc.	Columbia Electric, Inc.
Prepare Water Pollution Control Program	N/A	N/A	APPIAN UDBE SWPP	N/A	N/A	N/A	N/A

ATTACHMENT 4

Construction Change Order Policy for Enhanced Crosswalk Striping & Beacons / Radar Speed Feedback Signage, CP 3454 / 3458

2007 City Council Approved Construction Change Order Policy

Construction Award Award Amount	**Individual Administrative Change Order Authority**	**Cumulative Change Order Authority**
Under $50,000	$5,000	$7,500
Over $50,000	10% of Award or $25,000 whichever is smaller	15% of Award or $100,000 whichever is smaller

Enhanced Crosswalk Striping & Beacons / Radar Speed Feedback Signage, CP 3454 / 3458

Contract Award Amount	**Individual Administrative Change Order Authority**	**Cumulative Change Order Authority**
$418,150	N/A	$63,000 (15%)

Since 1977
PACIFIC ELECTRIC
CONTRACTING INC.

CA Lic. # 337416 (A, C-10)
TRAFFIC SIGNALS • STREET LIGHTING • GENERAL ENGINEERING

September 15, 2020

City of Milpitas
Steve Erickson- City Engineer- Serickson@ci.milpitas.ca.gov
Leon Taing- Asst. Civil Engineer- Ltaing@ci.milpitas.ca.gov
455 E. Calaveras Blvd .
Milptas, CA. 95035 (408) 586-3321

REF: Enhanced Crosswalk Striping & Beacons/Radar Speed Feedback Signage, CP 3454 &3458, City of Milpitas – BID PROTEST

Sirs:

Pacific Electric Contracting Inc is protesting any potential award to the Apparent Low Bidder - Bear Electrical Solutions- (B.E.S.) for the above-named project for the following reasons:

1. B.E.S.'s bid is a not a balanced bid per 00 21 13- Instructions to Bidders Item #30 (page 11) and should be considered non-responsive. Refer to items #9,#10 & 11 both regarding the Radar Speed Feedback Signs. Items #9 & #10 are Furnish and Install items with costs of $10,200.00 and $9200.00 respectively. Both are lower than the quoted cost of the sign itself $11,680.00 Each (Material Only) before taxes (see attached quote). Similarly, Item #11 Radar Speed Feedback Sign Trailer, which is purely a supply only item with no construction involved, is listed at $8,600.00 each whereas the quoted vendor price is $20,860.00 each. The three unit prices in question are both well below the Engineer's Estimate. It's possible that the apparent low bidder has artificially moved costs from Item #9, #10, and #11 to the three Add Alternate items knowing that the basis of award is based on the base bid amount solely.

2. B.E.S's low price for items #9,#10 & #11 could also indicate a pending Request for Substitution in advance strictly for the sake of being awarded the bid. The City of Milpitas was explicit in the selection of the approved products for the Radar Speed Feedback Signs (Fortel Traffic VCalm or approved equal. Per California Contract Code, there is procedure in place to evaluate "approved equal" products. But this happens after the City has awarded the bid and enters a contract. The City under pressure from the Contractor and at risk of delaying the project is forced to accept a potentially inferior product.

It should be noted that the Second Bidder, Pacific Electric Contracting Inc has submitted a **balanced bid, is quoting the City's specified equipment and in addition, when adding the Base Bid and Add-Alternates 1A, 2A, and 3A represents a total lower overall bid** though the criteria for low bidder is only based on the base bid.

Thank You,

Frank J. Camacho Jr. -President
Pacific Electric Contracting Inc.

Attached vendor quote- Jam Services Inc.

JAM SERVICES, INC.

958 E Airway Blvd
LIVERMORE, CA 94550

Telephone (925) 455-5267
Fax (925) 455-5348

PRICE QUOTATION – JWM091120B

SUBJECT: City of Milpitas Enhanced Crosswalk Striping
BID DATE: 9-11-20

JAM Services is pleased to provide the following price quotation for the subject project.

Bid Item #4 – Location 3
RRFB Package to Include:
(1) Solar RRFB w/Dual Lightbar, PPB and Mount
(1) Solar RRFB w/Dual Lightbar, PPB (Extended Harness to PPB Post) and Mount
(4) S1-1 FYG 36x36
(4) W16-7p FYG 24x12

TOTAL PRICE: $

(2) Galvanized type 1-B 15' w/Flange and Anchor Bolts
(1) Galvanized type PPB Post 5'7" w/Anchor Bolts

TOTAL PRICE.

Bid Item #5 – Location 4
RRFB Package to Include:
(2) Solar RRFB w/Dual Lightbar, PPB and Mount
(4) S1-1 FYG 36x36
(4) W16-7p FYG 24x12

TOTAL PRICE:

(2) Galvanized type 1-B 15' w/Flange and Anchot Bolts

TOTAL PRICE.

Bid Item #6 – Location 5
RRFB Package to Include:
(2) Solar RRFB w/Dual Lightbar, PPB (Extended Harness to PPB Post) and Mount
(4) S1-1 FYG 36x36
(4) W16-7p FYG 24x12

TOTAL PRICE:

(2) Galvanized type 1-B 15' w/Flange and Anchor Bolts
(2) Galvanized type PPB Post 5'7" w/Anchor Bolts

TOTAL PRICE:

Bid Item #7 – Location 8
RRFB Package to Include:
(2) Solar RRFB w/Dual Lightbar, PPB and Mount
(4) S1-1 FYG 36x36
(4) W16-7p FYG 24x12

TOTAL PRICE:

(2) Galvanized type 1-B 15' w/Flange and Anchot Bolts

TOTAL PRICE: $

Bid Item #8 – Location 7
RRFB Package to Include:
(2) Solar RRFB w/Dual Lightbar, PPB and Mount
(4) S1-1 FYG 36x36
(4) W16-7p FYG 24x12

TOTAL PRICE:

(2) Galvanized type 1-B 15' w/Flange and Anchot Bolts

TOTAL PRIC

Bid Item #9 – DETAIL 4 AT LOCS 10 AND 11
RSFS Package to Include:
(2) Solar Radar Speed Feedback Sign w/Dual ~~Flashing Beacons and Mount~~
(2) R2-1 AHI 36x30

TOTAL PRICE: 23,360.00

11,680.00 EA

(2) Galvanized type 1-B 15' w/Flange and Anchor Bolts

TOTAL PRICE:

Bid Item #10– DETAIL 5 AT LOCS 9, 10, 12, 13, 14
RSFS Package to Include:
(9) Solar Radar Speed Feedback Sign w/Dual ~~Flashing~~ Beacons and Mount
(9) R2-1 AHI 36x30

TOTAL PRICE: $105,120.00

11,680.00 EA

Bid Item #11– Trailer
RSFS Package to Include:
(3) Solar Trailer Mounted Radar Speed Feedback Sign

TOTAL PRICE: $62,580.00

20,860.00 EA

Bid Alt Item #1A – Location 1
RRFB Package to Include:
(1) Solar RRFB w/Dual Lightbar, PPB and Mount
(1) Solar RRFB w/Dual Lightbar, PPB (Extended Harness to PPB Post) and Mount
(4) S1-1 FYG 36x36
(4) W16-7p FYG 24x12

TOTAL PRICE:

(2) Galvanized type 1-B 15' w/Flange and Anchor Bolts
(1) Galvanized type PPB Post 5'7" w/Anchor Bolts

TOTAL PRICE:

Bid Alt Item #2A – Location 2
RRFB Package to Include:
(2) Solar RRFB w/Dual Lightbar, PPB and Mount
(4) S1-1 FYG 36x36
(4) W16-7p FYG 24x12 TOTAL PRICE:

(2) Galvanized type 1-B 15' w/Flange and Anchor Bolts

TOTAL PRICE:

Bid Alt Item #3A – Location 6
RRFB Package to Include:
(1) Solar RRFB w/Dual Lightbar, PPB and Mount
(1) Solar RRFB w/Dual Lightbar, PPB (Extended Harness to PPB Post) and Mount
(4) S1-1 FYG 36x36
(4) W16-7p FYG 24x12

TOTAL PRICE:

(1) Galvanized type 1-B 15' w/Flange and Anchor Bolts
(1) Galvanized type PPB Post 5'7" w/Anchor Bolts

TOTAL PRICE:

SUBTOTAL:

***Radar sign package includes Signs, Solar Array, Beacons, Modem, and 1 Year Service. Does not include wiring.**

***Quote is for material and quantities listed above only. Customer to verify counts prior to purchase.**

Prices include delivery, but are net of applicable sales tax. If I can be of further assistance, please contact me at 925-455-5267.

Thank you - Jason Momaney

CITY OF MILPITAS

ENGINEERING DIVISION

BID SUMMARY

Project Name: Enhanced Crosswalk Striping & Beacons / Radar Speed Feedback Signage
Project No. : 3454 / 3458
Bid Date: September 11, 2020 at 2:00PM

					Apparent Low Bidder													
			Engineer's Estimate		Bear Electrical Solutions, Inc.		Gruendl Inc. DBA Ray's Electric		St. Francis Electric, LLC		Tennyson Electric, Inc.		Brown & Fesler, Inc.		Pacific Electric Contracting, Inc.		Columbia Electric, Inc.	
Item	DESCRIPTION	Quantity	Unit Cost	Item Cost	Unit Cost	Item Cost	Unit Cost	Item Cost	Unit Cost	Item Cost	Unit Cost	Item Cost	Unit Cost	Item Cost	Unit Cost	Item Cost	Unit Cost	Item Cost
1	Mobilization	1 LS	$50,000.00	$50,000.00	$30,000.00	$30,000.00	$46,000.00	$46,000.00	$10,000.00	$10,000.00	$28,500.00	$28,500.00	$10,000.00	$10,000.00	$5,000.00	$5,000.00	$25,000.00	$25,000.00
2	Traffic Control	1 LS	$30,000.00	$30,000.00	$34,000.00	$34,000.00	$14,000.00	$14,000.00	$12,000.00	$12,000.00	$34,325.00	$34,325.00	$2,500.00	$2,500.00	$5,000.00	$5,000.00	$25,000.00	$25,000.00
3	Water Pollution Control Program	1 LS	$10,000.00	$10,000.00	$1,500.00	$1,500.00	$1,000.00	$1,000.00	$1,250.00	$1,250.00	$1,500.00	$1,500.00	$2,500.00	$2,500.00	$1,000.00	$1,000.00	$5,000.00	$5,000.00
4	Rectangular Rapid Flashing Beacon (RRFB) System at Fanyon Street [Location 3]	1 LS	$68,000.00	$68,000.00	$25,800.00	$25,800.00	$21,000.00	$21,000.00	$39,000.00	$39,000.00	$38,900.00	$38,900.00	$45,927.00	$45,927.00	$17,688.00	$17,688.00	$26,185.00	$26,185.00
5	Rectangular Rapid Flashing Beacon (RRFB) System at Kennedy Drive [Location 4]	1 LS	$60,000.00	$60,000.00	$22,600.00	$22,600.00	$19,000.00	$19,000.00	$37,700.00	$37,700.00	$32,865.00	$32,865.00	$39,393.00	$39,393.00	$17,028.00	$17,028.00	$19,400.00	$19,400.00
6	Rectangular Rapid Flashing Beacon (RRFB) System at N. Abbott Avenue [Location 5]	1 LS	$76,000.00	$76,000.00	$30,000.00	$30,000.00	$24,000.00	$24,000.00	$40,300.00	$40,300.00	$49,950.00	$49,950.00	$51,582.00	$51,582.00	$20,133.00	$20,133.00	$34,600.00	$34,600.00
7	Rectangular Rapid Flashing Beacon (RRFB) System at Yosemite Drive [Location 8]	1 LS	$60,000.00	$60,000.00	$26,700.00	$26,700.00	$19,000.00	$19,000.00	$31,100.00	$31,100.00	$31,700.00	$31,700.00	$40,273.00	$40,273.00	$16,438.00	$16,438.00	$18,800.00	$18,800.00
8	Rectangular Rapid Flashing Beacon (RRFB) System at Washington Drive [Location 7]	1 LS	$60,000.00	$60,000.00	$32,600.00	$32,600.00	$20,000.00	$20,000.00	$24,000.00	$24,000.00	$31,700.00	$31,700.00	$40,273.00	$40,273.00	$16,498.00	$16,498.00	$22,900.00	$22,900.00
9	Radar Speed Feedback Sign (RSFS) Assembly on New Pole per Detail 4 [Locations 10, 11]	2 EA	$20,000.00	$40,000.00	$10,200.00	$20,400.00	$19,000.00	$38,000.00	$27,750.00	$55,500.00	$18,250.00	$36,500.00	$22,670.00	$45,340.00	$16,752.00	$33,504.00	$21,250.00	$42,500.00
10	Radar Speed Feedback Sign (RSFS) Assembly on Existing Pole per Detail 5 [Locations 9, 10, 12, 13, 14]	9 EA	$15,000.00	$135,000.00	$9,200.00	$82,800.00	$17,000.00	$153,000.00	$23,500.00	$211,500.00	$8,465.00	$76,185.00	$20,615.00	$185,535.00	$15,478.00	$139,302.00	$19,700.00	$177,300.00
11	Radar Speed Feedback Sign (RSFS) Trailers	3 EA	$17,000.00	$51,000.00	$8,600.00	$25,800.00	$23,500.00	$70,500.00	$32,200.00	$96,600.00	$8,950.00	$26,850.00	$14,000.00	$42,000.00	$24,250.00	$72,750.00	$36,800.00	$110,400.00
	Total Base Bid		**$640,000.00**		**$332,200.00**		**$425,500.00**		**$558,950.00**		**$388,975.00**		**$505,323.00**		**$344,341.00**		**$507,085.00**	
1A	Additive Alternate 1A. Rectangular Rapid Flashing Beacon (RRFB) System at Arizona Ave [Location 1]	1 LS	$68,000.00	$68,000.00	$31,200.00	$31,200.00	$21,000.00	$21,000.00	$40,000.00	$40,000.00	$34,250.00	$34,250.00	$42,727.00	$42,727.00	$18,013.00	$18,013.00	$30,000.00	$30,000.00
2A	Additive Alternate 2A. Rectangular Rapid Flashing Beacon (RRFB) System at Dixon Road [Location 2]	1 LS	$68,000.00	$68,000.00	$25,750.00	$25,750.00	$21,000.00	$21,000.00	$43,400.00	$43,400.00	$36,400.00	$36,400.00	$44,833.00	$44,833.00	$20,028.00	$20,028.00	$34,600.00	$34,600.00
3A	Additive Alternate 3A. Rectangular Rapid Flashing Beacon (RRFB) System at Roswell Drive [Location 6]	1 LS	$68,000.00	$68,000.00	$29,000.00	$29,000.00	$20,000.00	$20,000.00	$36,100.00	$36,100.00	$37,975.00	$37,975.00	$51,322.00	$51,322.00	$17,915.00	$17,915.00	$40,800.00	$40,800.00
	Total Base Bid + Alternate Bids		**$844,000.00**		**$418,150.00**		**$487,500.00**		**$678,450.00**		**$497,600.00**		**$644,205.00**		**$400,297.00**		**$612,485.00**	

List of Sub-Contractors

Description	Bear Electrical Solutions, Inc.	Gruendl Inc. DBA	St. Francis Electric, LLC	Tennyson Electric, Inc.	Brown & Fesler, Inc.	Pacific Electric Contracting, Inc.	Columbia Electric, Inc.
Prepare Water Pollution Control Program	N/A	N/A	APPIAN UDBE SWPP	N/A	N/A	N/A	N/A

CITY OF MILPITAS

1325 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
GENERAL INFORMATION: 408-586-3225, TDD: 586-3013, www.ci.milpitas.ca.gov

September 18, 2020

VIA CERTIFIED MAIL AND EMAIL

Pacific Electric Contracting Inc.
330 Phelan Ave.
San Jose, CA 95112

SUBJECT: City of Milpitas
Enhanced Crosswalk Striping & Beacons/Radar Speed Feedback (CP 3454 & 3458)
Notice of Intent to Reject Bid Protest

Dear Mr. Frank J. Camacho Jr.:

The City of Milpitas ("City") has reviewed the bid protest letter filed by Pacific Electric Contracting Inc. ("Pacific") dated September 15, 2020 ("Protest") with regards to the above captioned project ("Project"). Based on our review, the Protest is meritless as it pertains to the bid submitted by the lowest responsible bidder submitting a responsive bid on the Project – Bear Electrical Solutions, Inc. ("Bear Electric").

As a threshold matter, a bid must conform to the material terms of the bid package. (*DeSilva Gates Constr. v. Department of Transp.* (2015) 242 Cal.App.4th 1409; *Menefee v. County of Fresno* (1985) 163 Cal.App.3d 1175.) A bid is responsive if it promises to do what the bidding instructions demand. (*Williams v. Clovis Unified Sch. Dist.* (2007) 146 Cal.App.4th 757; *Valley Crest Landscape Inc. v. City of Davis* (1996) 41 Cal.App.4th 1432, 1438.) Responsiveness should be determined from the face of the bid. (*Great W. Contractors, Inc. v. Irvine Unified Sch. Dist.* (2010) 187 Cal.App.4th 1425.) However, a bid may be responsive even if there is a discrepancy in the bid, as long as the discrepancy is inconsequential, that is, the discrepancy must not affect the amount of the bid or give a bidder an advantage over others. (*Ghilotti Constr. Co. v. City of Richmond* (1996) 45 Cal.App.4th 897; *Bay Cities Paving & Grading, Inc. v. San Leandro* (2014) 223 Cal.App.4th 1181.) A deviation must be capable of facilitating corruption or extravagance, or likely to affect the amount of bids or the response of potential bidders. These considerations must be evaluated from a practical rather than hypothetical standpoint, with reference to the factual circumstances of the case. (*Ghilotti Constr. Co. v. City of Richmond* (1996) 45 Cal.App.4th 897, 908-09, internal citations omitted.)

With the foregoing in mind and in reviewing the bid submitted by Bear Electric, it is clear the alleged errors in the bid are not errors at all and certainly do not amount to material mistakes requiring the City to reject the bid as nonresponsive.

As a preliminary matter, Pacific misinterprets the definition of an unbalanced bid. A materially unbalanced bid is one where "there is a reasonable doubt that award to the bidder submitting the mathematically unbalanced bid will result in the lowest ultimate cost to the Government." (*Matter of: Crown Laundry and Dry Cleaners*, Comp. Gen. B-208795.2, Apri1 22, 1983.) Here, Pacific is not alleging that the City will be required to pay more for the Project as a result of Bear Electric's bid strategy. Rather, the only allegation seems to be that Bear Electric has bid amounts that are below the pricing Pacific was able to obtain for certain bid items. Pacific also presents a completely unsubstantiated assumption that Bear Electric moved pricing under the three base bid items in question to the alternate bid items strategically to ensure that its base bid (the basis for determining the low bidder) is lower. Even assuming that is the bidding strategy employed by Bear Electric, it is not objectionable or unlawful. Bidders are free to take risks in the bidding process and strategically bid projects – this is the nature of an open market and low competitive bidding process. To the extent it did so, Bear Electric's choice to allocate costs to the alternate bid items is a risk taken by it since there is nothing obligating the City to award the alternate bid items. If the City does not choose to award those bid items, then Bear Electric will bear the burden of its bidding decisions.

Pacific also presents a secondary assumption regarding why Bear Electric may have bid the amounts it did for the three base bid items. Like the foregoing assumption, this secondary assumption is again frivolous conjecture without any factual support. Pacific notes Bear Electric may have bid lower amounts for these three base bid items because it will eventually choose to seek approval of or-equal substitutes for the specified products. It is again unclear why Pacific believes this to be unlawful. Bear Electric is free to take the risk of bidding potential substitute products. Under Public Contract Code section 3400, the City has complete discretion regarding whether those hypothetical substitutes are in fact equals to the products specified in the bid documents. Nothing in law prohibits Bear Electric from proposing a substitute – in fact the opposite is true under Public Contract Code section 3400, which precludes public agencies from sole sourcing products on public works projects unless there is a statutory basis for doing so and expressly allows contractors to propose equal substitute products in place of any product specified by name in the bid documents. The City is under no pressure to approve such substitute products nor is there any basis for the claimed delay that may occur should the City disagree that Bear Electric's hypothetical proposed substitutes are equal products.

We note the clear policy and purpose associated with the review of bids and bid protests as dictated by the court in *Ghilloti, supra*:

> They must also be viewed in light of the public interest, rather than the private interest of a disappointed bidder. 'It certainly would amount to a disservice to the public if a losing bidder were to be permitted to comb through the bid proposal or license application of the low bidder after the fact, [and] cancel the low bid on minor technicalities, with the hope of securing acceptance of his, a higher bid. Such construction would be adverse to the best interests of the public and contrary to public policy.' (*Judson Pacific–Murphy Corp. v. Durkee* (1956) 144 Cal.App.2d 377,383, 301 P.2d 97.)

(*Ghilotti, supra* 45 Cal.App.4th at 908-09.) Consistent with this policy, the City finds the Protest wholly meritless and rejects it in its entirety.

The City will consider award of this contract at its meeting on October 6, 2020. City staff intends to recommend rejection of Pacific's Protest as meritless and award of the contract to the lowest responsible bidder submitting a responsive bid, Bear Electric.

Sincerely,

Steven Erickson

Steve Erickson
Engineering Director/City Engineer

cc: File

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Adopt a Resolution Granting Acceptance of the Milpitas Skate Park & Snack Shack/Restroom Building Replacement, Projects No. 5111, No. 3424, and No. 6133, Authorizing the City Engineer to File a Notice of Completion, and Authorize him to Issue a Notice of Final Acceptance, and Approve a Budget Appropriation of $52,900 from the Community Facilities District No. 2005 Funds into the Public Works Operation and Maintenance Budget**
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	10/6/2020
Staff Contact:	Steve Erickson, 408-586-3301
Recommendations:	Adopt a Resolution granting acceptance of the Milpitas Skate Park & Snack Shack/ Restroom Building Replacement, Projects No. 5111, No. 3424, and No. 6133, authorizing the City Engineer to file a Notice of Completion, and Authorize him to issue a Notice of Final Acceptance, and approve a budget appropriation of $52,900 from Community Facilities District No. 2005 funds into the Public Works operation and maintenance budget.

Background:
On June 18, 2019, the City Council awarded a construction contract to Suarez and Munoz Construction, Inc. for the Milpitas Skate Park and Concession/Restroom/ Storage Buildings, Projects No. 5111, No. 3424, and No. 6133 in the amount of $4,579,156 ("Project"). The Project provided for the construction of a 20,000 square foot all-wheel facility Skate Park facility with shade structure and site furnishings, replacement of the aging concession/restroom building, drainage improvements, installation of an additional restroom building near Cardoza Park, and provided five new equipment storage containers strategically placed around the Sports Center Fields for use by the athletic leagues.

Analysis:
The Project was successfully 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.

Completion of this project has added two additional facilities to the parks infrastructure inventory that will require ongoing maintenance and operation by the Public Works Department, so they remain clean and safe. These new facilities are the skate park and the new two room restroom building located on the east side of the synthetic turf field at the border with Cardoza Park. The annual cost for operation and maintenance of the new skate park facilities is estimated at $45,000, and the estimated annual cost for cleaning, supplies, and security for the restroom facility is $7,900. The Public Works operation and maintenance budget already includes funding for maintenance of the Sports Center snack shack concession and restroom building, so staff is only requesting funding for the skate park and the new smaller modular restroom. Staff recommends the approval of a Budget Appropriation of $52,900 from the Community Facilities District (CFD) 2005 funds into the Public Works Operation and Maintenance Budget for the ongoing annual maintenance of these facilities.

Policy Alternatives:

Alternative 1: Do not adopt Resolution and deny Project acceptance, deny filling a 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.

Alternative 2: Do not approve requested budget appropriation of $52,900 for the annual maintenance of the new park facilities.

Pros: None

Cons: A denial would create an additional burden on available funding for use in the maintenance and operation of City infrastructure.

Reason not Recommended: The Public Works Department is already struggling with available funding and shortages which impact the maintenance of existing infrastructure.

Fiscal Impact:
No additional funding is requested for construction of the skate park and snack shack as project construction is now complete and it was completed on-time and within budget. However, ongoing annual operations and maintenance for the new facilities will require the approval of a budget appropriation of $52,900 from the Community Facilities District (CFD) 2005 funds into the Public Works Operation and Maintenance Budget.

California Environmental Quality Act: The firm of David J. Powers & Associates Inc. created the CEQA documents for this project. The City's Planning Department determined the Project is exempt under Section 15301 (Existing Facilities) of CEQA guidelines.

Recommendation:
Adopt a Resolution granting acceptance of the Milpitas Skate Park & Snack Shack/Restroom Building Replacement, Projects No. 5111, No. 3424, and No. 6133, authorizing the City Engineer to file a Notice of Completion, and authorize the City Engineer to issue a Notice of Final Acceptance, and approve a budget appropriation of $52,900 from the Community Facilities District No. 2005 Funds into the Public Works operation and maintenance budget.

Attachments:
1) Resolution
2) Budget Change Form

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS GRANTING ACCEPTANCE OF THE MILPITAS SKATE PARK, AND CONCESSION/RESTROOM/ BUILDINGS, PROJECTS NO. 5111, NO. 3424 AND NO. 6133

WHEREAS, the City of Milpitas has heretofore entered into a contract with Suarez and Munoz Construction, Inc., for the Milpitas Skate Park and Concession/Restroom/Storage Buildings, Projects No. 5111, No. 3424 and No. 6133 in the amount $4,579,156 ("Project"), and the City Engineer of the City of Milpitas has recommended acceptance of said improvement 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 said improvement 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:

Mary Lavelle, City Clerk

APPROVED:

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

Recording Requested by and
When Recorded Mail to:

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

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 June 16, 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: **Milpitas Skate Park and Concession/Restroom/Storage Buildings, Projects No. 5111, No. 3424 and No. 6133**.

2. A description of the site of which the City is owner for said work of improvement is: **1325 E. Calaveras Blvd.** 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: **Suarez & Munoz Construction, Inc., 2490 American Ave. Hayward, CA 94545.**

4. A general statement of the kind of work done or materials furnished to the City is as follows: **The construction of a 20,000 square foot Skate Park facility, replacement of the aging concession/ restroom building, and the installation of a new two-stall restroom building and five new equipment storage containers.**

5. Said work of improvement was accepted by the Milpitas City Council as complete on September 15, 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 ____, 2020 at Milpitas, California.

_____
Steve Erickson, City Engineer/
Director of Engineering, City of Milpitas

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

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From*		To*	
	Account	Amount	Account	Amount
Check one: ☒ **Budget Appropriation** ☐ **Budget Transfer**	**237-2909**	**$52,900**	**237-4244237**	**$52,900**

Adopt a Resolution granting acceptance of the Milpitas Skate Park & Snack Shack/Restroom Building Replacement, Projects No. 5111, No. 3424, and No. 6133, authorizing the City Engineer to file a Notice of Completion, and Authorize him to issue a Notice of Final Acceptance, and approve a budget appropriation of $52,900 from Community Facilities District No. 2005 funds into the Public Works operation and maintenance budget.

Background:
On June 18, 2019, the City Council awarded a construction contract to Suarez and Munoz Construction, Inc. for the Milpitas Skate Park and Concession/Restroom/ Storage Buildings, Projects No. 5111, No. 3424, and No. 6133 in the amount of $4,579,156 ("Project"). The Project provided for the construction of a 20,000 square foot all-wheel facility Skate Park facility with shade structure and site furnishings, replacement of the aging concession/restroom building, drainage improvements, installation of an additional restroom building near Cardoza Park, and provided five new equipment storage containers strategically placed around the Sports Center Fields for use by the athletic leagues.

Analysis:
The Project was successfully 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.

Completion of this project has added two additional facilities to the parks infrastructure inventory that will require ongoing maintenance and operation by the Public Works Department, so they remain clean and safe. These new facilities are the skate park and the new two room restroom building located on the east side of the synthetic turf field at the border with Cardoza Park. The annual cost for operation and maintenance of the new skate park facilities is estimated at $45,000, and the estimated annual cost for cleaning, supplies, and security for the restroom facility is $7,900. The Public Works operation and maintenance budget already includes funding for maintenance of the Sports Center snack shack concession and restroom building, so staff is only requesting funding for the skate park and the new smaller modular restroom. Staff recommends the approval of a Budget Appropriation of $52,900 from the Community Facilities District (CFD) 2005 funds into the Public Works Operation and Maintenance Budget for the ongoing annual maintenance of these facilities.

Policy Alternative:
Alternative 1: Do not adopt Resolution and deny Project acceptance, deny filling a 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.

Alternative 2: Do not approve requested budget appropriation of $52,900 for the annual maintenance of the new park facilities.

Pros: None

Cons: A denial would create an additional burden on available funding for use in the maintenance and operation of City infrastructure.

Reason not Recommended: The Public Works Department is already struggling with available funding and shortages which impact the maintenance of existing infrastructure.

Fiscal Impact:
No additional funding is requested for construction of the skate park and snack shack as project construction is now complete and it was completed on-time and within budget. However, ongoing annual operations and maintenance for the new facilities will require the approval of a budget appropriation of $52,900 from the Community Facilities District (CFD) 2005 funds into the Public Works Operation and Maintenance Budget.

California Environmental Quality Act: N/A
The firm of David J. Powers & Associates Inc. created the CEQA documents for this project. The City's Planning Department determined the Project is exempt under Section 15301 (Existing Facilities) of CEQA guidelines.

Recommendations:
Adopt a Resolution granting acceptance of the Milpitas Skate Park & Snack Shack/Restroom Building Replacement, Projects No. 5111, No. 3424, and No. 6133, authorizing the City Engineer to file a Notice of Completion, and authorize the City Engineer to issue a Notice of Final Acceptance, and approve a budget appropriation of $52,900 from the Community Facilities District No. 2005 Funds into the Public Works operation and maintenance budget.

Attachments:
1) Resolution
2) Budget Change Form

☐ **Check if City Council Approval required.** **Meeting Date**: October 6, 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:	**Adopt a Resolution Granting Acceptance of Water Bottle Refill Station Installation Project, CUP 2353 and Authorizing the Director of Public Works to File a Notice of Completion and Issue a Notice of Final Acceptance**
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	10/6/2020
Staff Contact:	**Tony Ndah, 408-586-2602**
Recommendation:	Adopt a resolution granting acceptance of Water Bottle Refill Station Installation Project, CUP (California Uniform Public Construction Cost Accounting Act public works project) 2353 and authorizing the Director of Public Works to file a Notice of Completion and issue a Notice of Final Acceptance after the one-year warranty period has elapsed.

Background:
On August 13, 2019, the City Council awarded a construction contract to Hoi's Construction, Inc. for the Water Bottle Refill Station Installation Project, California Uniform Public Construction Cost Accounting Act public works project CUP 2303 ("Project"), in the amount of $178,000.00. The Project was part of the City's continued efforts to diminish its footprint on the environment by reducing water and plastic water bottle waste. The Project installed water bottle refill stations to replace existing drinking water fountains at City facilities and parks - in total 31 stations.

Due to unforeseen circumstances related to COVID-19, the Project was delayed, and a time extension was granted. The Project scope was also expanded to include the installation of an additional unit and to accommodate for unforeseen field conditions. A total of four (4) change orders were issued to address these unforeseen circumstances, for a total of $11,529.02, thereby increasing the project cost from the original contract amount of $178,000.00 to $189,529.02. The change orders and expanded scope of work are within the authorized limits granted to the Director of Public Works to execute contract change orders without any further City Council action.

Analysis:
The Project was successfully completed within budget. Staff recommends the City Council adopt a resolution granting acceptance of the Project and authorizing the Director of Public Works 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 Director of Public Works to issue a notice of final acceptance after the one-year warranty period has elapsed, without further City Council action, provided that all warranty work is completed to the satisfaction of the Director of Public Works.

Policy Alternative:

Alternative: Do not adopt a resolution and deny Project acceptance, deny filing a 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:
There are sufficient funds available in the Public Works operating budget to maintain the refill stations.

California Environmental Quality Act:
The Project is exempt from further environmental review as a Class 1 Categorical Exemption under CEQA Guidelines §15301 (a) and (e)(2), Existing Facilities.

Recommendation:
Adopt a resolution granting acceptance of Water Bottle Refill Station Installation Project, CUP (California Uniform Public Construction Cost Accounting Act public works project) 2353 and authorizing the Director of Public Works to file a Notice of Completion and issue a Notice of Final Acceptance after the one-year warranty period has elapsed.

Attachment:
Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS GRANTING ACCEPTANCE OF THE WATER BOTTLE REFILL STATION PROJECT, CUP 2353

WHEREAS, the City of Milpitas has heretofore entered into a contract with Hoi's Construction, Inc., for the Water Bottle Refill Station Project, CUP 2353, in the amount $178,000 ("Project"), and the Director of Public Works of the City of Milpitas has recommended acceptance of said improvement as completed in accordance with plans, specifications and approved change orders and correction lists, and in accordance with the final inspection of said Director of Public Works.

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 6th day of October, 2020, and does hereby authorize and direct the Director of Public Works 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 Director of Public Works 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 Director of Public Works 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 August 13, 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: **Water Bottle Refill Station Project, CUP 2353**.

2. A description of the site of which the City is co-owner for said work of improvement is: **City Parks, Senior Center, Sports Center, Community Center and Public Works/Police Building,** 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: **Hoi's Construction Inc., 2246 Jarrold Avenue, Suite 6, San Francisco, CA 94124.**

4. A general statement of the kind of work done or materials furnished to the City is as follows: **Installation of new water bottle refill stations and removal of existing water fountains at various locations throughout the City.**

5. Said work of improvement was accepted by the Milpitas City Council as complete on October 6, 2020.

****

I, the undersigned, declare that I am the **Director of Public Works** 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 October 6, 2020 at Milpitas, California.

_____
Tony Ndah,
Director of Public Works
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:	**Adopt a Resolution Granting Acceptance of Public Improvements and Approving Reduction of Faithful Performance Bond for Public Improvements for 260 South Main Street Subdivision at 260 South Main Street by Eastside San Ramon Partners, LLC, and Granting Authorization to the City Engineer to Release the Performance Bond After the One-year Warranty Period**
Category:	Consent Calendar-Community Development
Meeting Date:	10/6/2020
Staff Contact:	Steve Erickson, 408-586-3301
Recommendation:	Adopt a resolution: 1. Granting acceptance of public improvements for 260 South Main Street Subdivision at 260 South Main Street, Tract 10435, Public Improvement Plan No. 2-1233; and 2. Approving a reduction in the faithful performance bond to $16,000, which shall be subject to and in effect for the duration of a one-year warranty period; and 3. Granting authorization to the City Engineer to release the performance bond after the one-year warranty period, without further City Council action provided all required warranty work is completed to his satisfaction.

Background:
On November 7, 2017, the City Council approved the Final Map, public improvement plans, and the Subdivision Improvement Agreement ("Agreement") for Tract 10435 for 260 South Main Street Subdivision located at 260 South Main Street by Eastside San Ramon Partners, LLC ("Developer"). Public improvements installed include curb and gutter, sidewalk, driveway, asphalt concrete pavement, utility services, landscaping and other items of work along South Main Street and Sinnott Lane project frontages.

Analysis:
Public improvements have been successfully installed in accordance with the approved plans and specifications, and the completed work is ready for City acceptance and commencement of the 1-year warranty period. Staff recommends the City Council adopt a resolution (Attached) to accept the public improvements, to reduce the performance bond to $16,000, which is 10% of the security's original value, and authorize the City Engineer to release the performance bond after the one-year warranty period once all required warranty work is satisfactorily completed.

Policy Alternative:

Alternative: Do not adopt a resolution granting acceptance of installed public improvements.

Pros: None

Cons: The Subdivision Improvement Agreement between the City and Developer requires the City to accept successfully installed pubic improvements that have passed inspection and meet the requirements of the Agreement and the approved plans and specifications. Not accepting the completed public improvements as

required by the Subdivision Improvement Agreement would delay the project and may subject the City to a claim by the Developer.

Reason not recommended: Staff recommends the City Council grant acceptance of installed public improvements in compliance with the requirements of the Subdivision Improvement Agreement allowing the City to own and maintain the improvements.

Fiscal Impact:
The public improvements have been constructed by the Developer as a requirement of the Subdivision Improvement Agreement. The City will have perpetual maintenance responsibilities for the improvements following completion of the 1-year warranty period.

California Environmental Quality Act:
Granting acceptance of public improvements and reducing faithful performance bond for public improvements are not considered projects under CEQA, as there will be no direct or reasonably foreseeable indirect physical change in the environment.

Recommendation:
Adopt a resolution:
1. Granting acceptance of public improvements for 260 South Main Street Subdivision at 260 South Main Street, Tract 10435, Public Improvement Plan No. 2-1233; and
2. Approving a reduction in the faithful performance bond to $16,000, which shall be subject to and in effect for the duration of a one-year warranty period; and
3. Granting authorization to the City Engineer to release the performance bond after the one-year warranty period, without further City Council action, provided all required warranty work is completed to his satisfaction.

Attachments:
Resolution
Subdivision Improvement Agreement

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING ACCEPTANCE AND REDUCING PERFORMANCE BOND OF 260 SOUTH MAIN STREET SUBDIVISION, TRACT NO. 10435, AND GRANTING AUTHORIZATION TO THE CITY ENGINEER TO RELEASE THE PERFORMANCE BOND AFTER THE ONE-YEAR WARRANTY PERIOD

WHEREAS, on November 7, 2017, the City Council of the City of Milpitas approved the plans and specifications for the 260 South Main Street Subdivision, Tract No. 10435 (the "Project"), to be completed by Eastside San Ramon Partners, LLC, as part of its mixed-use development on 260 South Main Street; and

WHEREAS, on November 7, 2017, the City of Milpitas entered into a Subdivision Improvement Agreement with Eastside San Ramon Partners, LLC, for the Project; and

WHEREAS, Eastside San Ramon Partners, LLC, as Principal, and SureTec Insurance Company, as Surety, executed and posted that certain Performance Bond No. 4407807 conditioned upon the faithful performance of the provisions of said Subdivision Improvement Agreement and upon the faithful performance of all improvement work required thereunder; and

WHEREAS, said public improvements for the Project have been completed and the Subdivision Improvement Agreement provides that the security shall extend for a period of one year after the date of acceptance of said improvements to cover the warranty period of said improvements under said Agreement; and

WHEREAS, the City Council is willing to consent to a reduction in the penal sum of said security during said one year warranty period; and

WHEREAS, the City Engineer of the City of Milpitas has made a final inspection of said improvements for the Project and recommends that the City Council of the City of Milpitas accept the same as constructed in accordance with the approved plans and specifications.

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. Those certain public improvements constructed as part of the Project are hereby accepted as constructed in accordance with the approved plans and specifications upon recommendation of the City Engineer of the City of Milpitas.
3. The penal sum of the faithful performance bond securing said improvements may be reduced to the sum of $16,000, upon request of Principal and Surety, with said penal sum as reduced to apply from the date of completion and acceptance of said improvements and to extend for the balance of the term of one year of said security. Provided, however, that nothing herein contained shall in any way be deemed to be a waiver, release or relinquish by City of any obligations imposed upon the developer or his surety, or sureties, by law or by the above referend public improvement agreement, save and except as expressly set forth herein.

4. The City Council grants authorization to the City Engineer to release the performance bond after the one-year warranty period without further City Council action provided all required warranty work is completed to the satisfaction of the City Engineer.

PASSED AND ADOPTED this _____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Rich Tran, Mayor

APPROVED AS TO FORM:

_____
Christopher J. Diaz, City Attorney

23822683

Regina Alcomendras
Santa Clara County - Clerk-Recorder
12/08/2017 09:46 AM

CONFORMED COPY

Copy of document recorded.
Has not been compared with original.

RECORDING REQUESTED BY:
WHEN RECORDED RETURN TO:

CITY OF MILPITAS
455 E. Calaveras Boulevard
MILPITAS, CA 95035-5411
ATTN: Engineering Department

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Exempt from recording fee, per Government Code Section 6103

CITY OF MILPITAS, CALIFORNIA

SUBDIVISION IMPROVEMENT AGREEMENT

TRACT NO. 10435

Between

CITY OF MILPITAS

a California municipal corporation

and

Eastside San Ramon Partners, LLC,

a California Limited Liability Company

SUBDIVISION IMPROVEMENT AGREEMENT
TRACT NO. 10435

I. PARTIES AND DATE.

This Subdivision Improvement Agreement ("Agreement") is entered into as of this 24th day of October, 2017 by and between the City of MILPITAS, a California municipal corporation ("City") and Eastside San Ramon Partners, LLC, a California Limited Liability Company with its principal office located at 12885 Alcosta Boulevard, Suite A, San Ramon, CA 94583 ("Developer"). City and Developer are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

II. RECITALS.

A. On January 15, 2016, Developer submitted to City an application for approval of a vesting tentative map for real property located within City, a legal description of which is attached hereto as Exhibit "A" ("Property"). The vesting tentative map was prepared on behalf of Developer by C&V Consulting, INC., and is identified in City records as Tract Map No. 10435 ("Tract No.10435").

B. Developer's application for a vesting tentative map for Tract No.10435 was deemed complete on August 11, 2016. On December 6, 2016, the MILPITAS CITY COUNCIL conditionally approved Developer's application for a vesting tentative map for Tract No.10435.

C. 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.10435, or other ordinances, resolutions, or policies of City requiring construction of improvements in conjunction with the subdivision of land.

D. 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. 10435.

E. 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.10435.

III. TERMS.

1.0 Effectiveness. This Agreement shall not be effective unless and until all four 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; (c) the City Council of the City ("City Council") approves the final map for Tract No.10435 and (d) Developer records the final map for Tract No.10435 in the Recorder's Office of the County of SANTA CLARA. If the above described conditions are not satisfied, 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.10435.

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.10435, 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. 10435 ("Public Improvements"). The Public Improvements are more specifically described with the Engineer's Cost Estimates in Exhibit "B," which is attached hereto and incorporated herein by this reference, and as shown on City approved Improvement Plan No. E-PI17-0002 on file with the City. Construction of the Public Improvements shall include any transitions and/or other incidental work deemed necessary for drainage or public safety. 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.

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 as described and as shown on Improvement Plan No.E-PI17-0002 on file with the City 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. 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 24 months 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 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 Section 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. 10435 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.10435.

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 ten (10) 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; 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. Upon the total 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 3093. If Tract No. 10435 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 by the record engineer 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 in a vigorous and thriving condition reasonably acceptable to City, for a period of one (1) year following completion of the work and acceptance by City ("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 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 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 Security; Surety Bonds. Prior to execution of this Agreement, Developer shall provide City with improvement securities 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. The amount of the improvement security shall be adjusted annually based on the Engineering News-Record Construction Price Index for the San Francisco-San Jose area in November of each year, Developer shall have an affirmative obligation to provide the City with evidence of valid security no later than November 30 of each year until all improvements required by project conditions have been constructed.

13.1 Performance Improvement Security. 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 8.0 et seq. of this Agreement, and to secure Developer's 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 improvement securities in the total amount of ONE HUNDRED AND SIXTY THOUSANDS DOLLARS ($160,000), 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 the Public Improvements are accepted by City, provided that Developer is not in default on any provision of this Agreement or condition of approval for Tract No. 10435. All security provided under this section shall be reduced to ten percent (10%) based upon the security's annually adjusted value for the Warranty period. 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 of this Agreement, provided that Developer is not in default on any provision of this Agreement or condition of approval for Tract No. 10435.

13.2 Labor & Material Improvement Security. 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 improvement security in the total amount of ONE HUNDRED AND SIXTY THOUSANDS DOLLARS ($160,000), 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 City's execution of this Agreement, to guarantee payment to the engineer or surveyor for the setting of all subdivision boundaries, lot corners, and street centerline monuments for Tract No. 10393 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 TWENTY FIVE HUNDRED DOLLARS ($2,500), 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 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. 10393.

14.0 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.

15.0 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.

15.1 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.

16.0 Insurance.

16.1 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.

16.1.1 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.

16.1.2 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.

16.1.3 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.

16.1.4 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.

16.2 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.

16.3 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.

16.4 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.

16.5 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.

16.6 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.

16.7 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.

17.0 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.

18.0 Relationship Between the Parties. The Parties hereby mutually agree that neither this Agreement, any map related to Tract No. 10435, 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

19.2 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.

19.3 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.

19.4 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 OF MILPITAS
455 E. Calaveras Boulevard
Milpitas, CA ~~92236~~ 95035
Attn: Steven Erickson, PE
Acting City Engineer

DEVELOPER:
12885 Alcosta Blvd, Suite A
San Ramon, CA 94583
Attn: Steve Garrett

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

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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the day and year first above written.

CITY OF MILPITAS

By: _____
(signature)
Steve J. Pangelinan
(print name)
Interim City Manager

_____
City of MILPITAS

EASTSIDE SAN RAMON PARTNERS, LLC

By: _____
(signature)
THOMAS A. BALACCI
(print name)

President
(title)

APPROVED AS TO FORM:

By: _____
(signature)
Christopher Diaz
(print name)

APPROVED AS TO SUFFICIENCY:

By: _____
(signature)
Steven P. Erickson, PE
(print name)
Acting City Engineer
City of MILPITAS

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.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT **CIVIL CODE § 1189**

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 Contra Costa,

On October 24, 2017 before me, **N. ACKERMAN, NOTARY PUBLIC**, personally appeared
(*Date*)

THOMAS A. BALDACCI who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

NNA1 **N. ACKERMAN**
Commission # 2136117
Notary Public - California
Contra Costa County
My Comm. Expires Jan 6, 2020 NNA1

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 N Ackerman
Signature of Notary Public

Place Notary Seal Above

----------***OPTIONAL***----------

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title of Type of Document: Subdivision Improvement Agreement Tract #10435

Document Date: _____ Number of Pages: _____

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 Santa Clara)

On December 5, 2017 before me, Rachelle CURRIE, Notary Public
(insert name and title of the officer)

personally appeared Steve J. Pangelinan,
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.

RACHELLE CURRIE
COMM. #2172300
Notary Public - California
Santa Clara County
My Comm. Expires Nov. 18, 2020

Signature _____ **(Seal)**

For: Subdivision Improvement Agreement between the City of Milpitas and Eastside San Ramon Partners, LLC for Tract No. 10435, 260 South Main Street, Milpitas CA 95035

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

TRACT NO. 10435

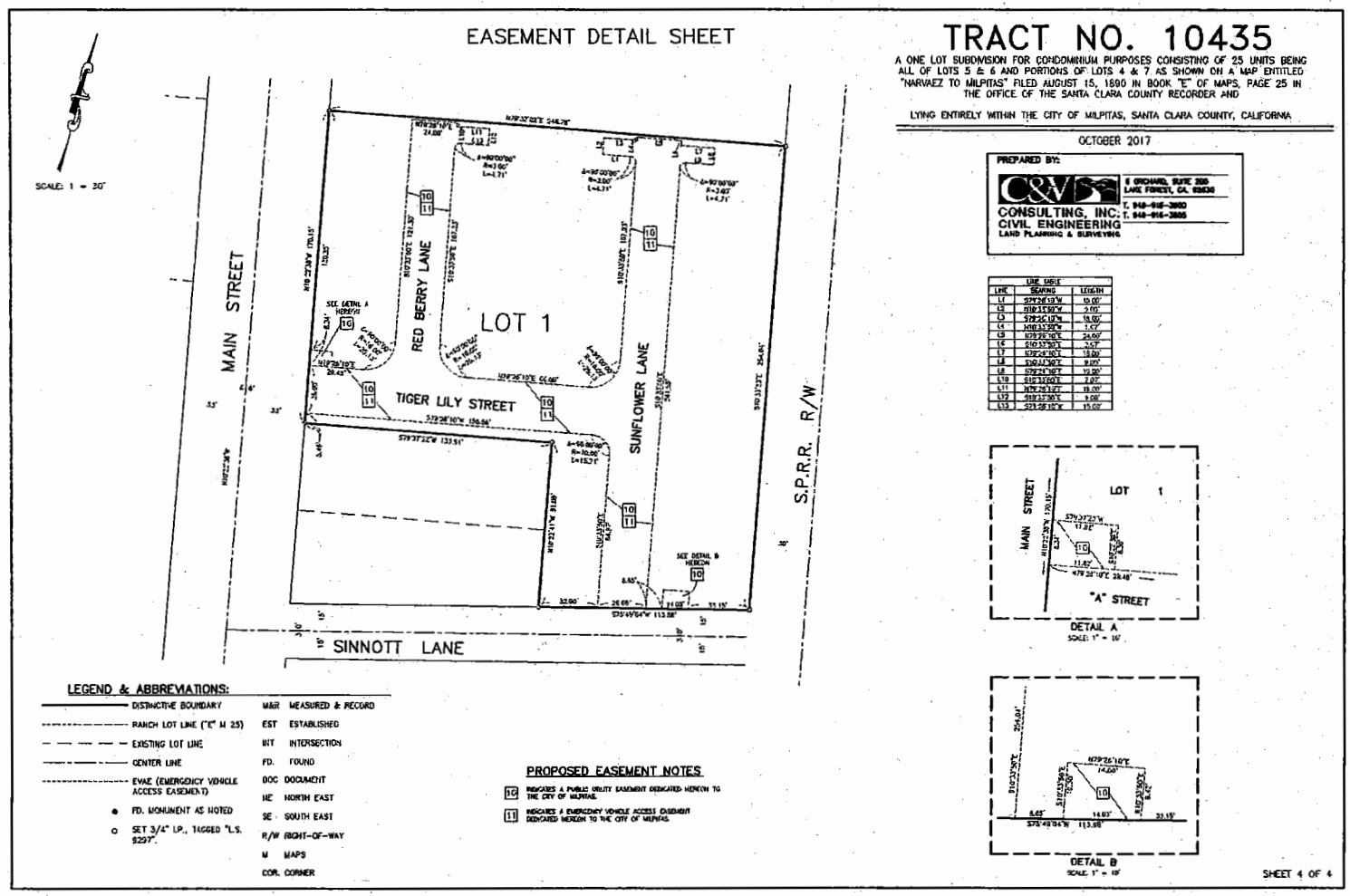


EXHIBIT "B"

ENGINEER'S COST ESTIMATE

COST ESTIMATE

C&V CONSULTING, INC.
CIVIL ENGINEERING
LAND PLANNING & SURVEYING
6 ORCHARD, SUITE 200
LAKE FOREST, CA 92630
T.949.916.3800
F.949.916.3805
CVC-INC.NET

PROJECT: CAST-001
260 SOUTH MAIN STREET
PUBLIC IMPROVEMENT PLANS
DEVELOPER: CASTLE COMPANIES

ENGINEER:	DATE:	CALCULATED BY:	PLAN CHECK No.:
DANE MCDOUGALL	10/16/2017	CASEY KNIGHT	

CONSTRUCTION ITEM	QUANTITY			UNIT COST	TOTAL
STREET IMPROVEMENTS					
6" PCC CURB & GUTTER	222	LF	@	$45.00	$9,990
6" PCC DRIVEWAY	1	EA	@	$4,000.00	$4,000
6" COMMERCIAL SIDEWALK	2,013	SF	@	$9.02	$18,157
TREE WELL	3	EA	@	$1,000.00	$3,000
PARKWAY DRAIN	1	EA	@	$1,000.00	$1,000
4" AC CAP OVER 7" AB	284	SF	@	$7.25	$2,059
COLD PLANE EXIST AC PAVEMENT	568	SF	@	$1.00	$568
SLURRY SEAL FULL STREET WIDTH & REPAINT TRAFFIC STRIPING	8,743	SF	@	$3.00	$26,229
BIKE RACK	2	EA	@	$300.00	$600
PUBLIC BENCH	2	EA	@	$500.00	$1,000
SAWCUT	3	EA	@	$300.00	$900
REPAINT RED CURB	115	LF	@	$10.00	$1,150
6" TO 0" CURB TRANSITION	2	EA	@	$100.00	$200
0" CURB AND GUTTER	26	LF	@	$12.00	$312
WATER IMPROVEMENTS					
8" PVC C900 DR-14 DW LINE, BEDDING & BACKFILL	17	LF	@	$185.00	$3,145
6" PVC C900 DR-14 DW LINE, BEDDING & BACKFILL	26	LF	@	$180.00	$4,680
4" GATE VALVE	1	EA	@	$1,500.00	$1,500
CUT IN TEE	2	EA	@	$10,000.00	$20,000
6" COMPOUND METER ASSEMBLY	1	EA	@	$5,000.00	$5,000
6" FIRE SERVICE METER ASSEMBLY	1	EA	@	$5,000.00	$5,000
TEMPORARY END CAP	2	EA	@	$50.00	$100
D.I. TEE	1	EA	@	$200.00	$200
D.I. BEND	5	EA	@	$180.00	$900
4" FEBCO BACKFLOW	1	EA	@	$3,500.00	$3,500
1" SERVICE & METER	1	EA	@	$5,000.00	$5,000
4" PVC C900 DR-14 DW LINE, BEDDING & BACKFILL	15	LF	@	$100.00	$1,500
1.5" IRRIGATION SERVICE & METER	1	EA	@	$6,000.00	$6,000
SANITARY SEWER IMPROVEMENTS					
8" PVC SDR-35 SS LINE, BEDDING & BACKFILL	11	LF	@	$215.00	$2,365
TEMPORARY END CAP	1	EA	@	$50.00	$50
48" DIA. SS MANHOLE	1	EA	@	$5,000.00	$5,000
				SUB-TOTAL	$133,105
				20% CONTINGENCY	$26,621
				TOTAL	$159,726

REGISTERED PROFESSIONAL ENGINEER
DANE P. MCDOUGALL
C 80705
CIVIL
STATE OF CALIFORNIA

EXHIBT "C"

IMPROVEMENT SECURITIES (SURETY BONDS)

TRACT NO. 10435

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: $160,000
Surety: SureTec Insurance Company
Attorney-in-fact: Kathleen Beck
Address: 3131 Camino Del Rio N, Ste. 1450
San Diego, CA 92108

MATERIAL AND LABOR BOND PRINCIPAL AMOUNT: $160,000
Surety: SureTec Insurance Company
Attorney-in-fact: Kathleen Beck
Address: 3131 Camino Del Rio N, Ste. 1450
San Diego, CA 92108

MONUMENT SECURITY (Cash Deposit, Certificate of Deposit): $2,500

BOND NO. 4407807
INITIAL PREMIUM: $2,400.00
SUBJECT TO RENEWAL

CITY OF MILPITAS

TRACT MAP NO. 10435 IMPROVEMENTS

FAITHFUL PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS the City of MILPITAS, California ("City") and Eastside San Ramon Partners, LLC, a California 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, sidewalks, storm drains, sanitary sewers, utilities, drainage facilities, traffic controls, landscaping, street lights, and all other required facilities for Tract Map No. 10435 ("Public Improvements");

WHEREAS, the Public Improvements to be performed by Principal are more particularly set forth in that certain Agreement for Completion of Pubic Improvements dated October 24, 2017 ("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 SureTec Insurance Company ("Surety"), a corporation organized and existing under the laws of the State of Texas, 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 AND SIXTY THOUSANDS dollars ($160,000), 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 Concord, CA, this 24th day of October, 2017.

Eastside San Ramon Partners, LLC	SureTec Insurance Company
Principal By: St. Thomas Construction, Inc., its managing member	Surety
By:	By:
President	Attorney-in-Fact
Thomas A. Baldacci	Kathleen Beck, Attorney-in-Fact
(print name)	(print name)

NOTE: APPROPRIATE NOTARIAL ACKNOWLEDGMENTS OF EXECUTION BY PRINCIPAL AND SURETY, AND A COPY OF THE POWER OF ATTORNEY TO LOCAL REPRESENTATIVES OF THE BONDING COMPANY MUST BE ATTACHED TO THIS BOND.

POA #: 510579

SureTec Insurance Company

LIMITED POWER OF ATTORNEY

Know All Men by These Presents, That SURETEC INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Texas, and having its principal office in Houston, Harris County, Texas, does by these presents make, constitute and appoint

Kathleen Beck, Billy G. Bergan, Susan J. Peragallo

its true and lawful Attorney-in-fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include waivers to the conditions of contracts and consents of surety for:

Five Million and 00/100 Dollars ($5,000,000.00)

and to bind the Company thereby as fully and to the same extent as if such bond were signed by the President, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney-in-Fact may do in the premises. Said appointment shall continue in force until 10/31/2016 and is made under and by authority of the following resolutions of the Board of Directors of the SureTec Insurance Company:

Be it Resolved, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

Attorney-in-Fact may be given full power and authority for and in the name of and of behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

Be it Resolved, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached. *(Adopted at a meeting held on 20th of April, 1999.)*

In Witness Whereof, SURETEC INSURANCE COMPANY has caused these presents to be signed by its President, and its corporate seal to be hereto affixed this 21st day of November, A.D. 2014

SURETEC INSURANCE COMPANY

By: _____

John Knox Jr., President

State of Texas ss:
County of Harris

On this 21st day of November, A.D. 2014 before me personally came John Knox Jr., to me known, who, being by me duly sworn, did depose and say, that he resides in Houston, Texas, that he is President of SURETEC INSURANCE COMPANY, the company described in and which executed the above instrument; that he knows the seal of said Company; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Company; and that he signed his name thereto by like order.

JACQUELYN MALDONADO
Notary Public
State of Texas
My Comm. Exp. 5/18/2017

_____

Jacquelyn Maldonado, Notary Public
My commission expires May 18, 2017

I, M. Brent Beaty, Assistant Secretary of SURETEC INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Company, which is still in full force and effect; and furthermore, the resolutions of the Board of Directors, set out in the Power of Attorney are in full force and effect.

Given under my hand and the seal of said Company at Houston, Texas this 24th day of October, 2017, A.D.

_____

M. Brent Beaty, Assistant Secretary

Any instrument issued in excess of the penalty stated above is totally void and without any validity.
For verification of the authority of this power you may call (713) 812-0800 any business day between 8:00 am and 5:00 pm CST.

CALIFORNIA ALL-PURPOSE 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 Contra Costa

On October 24, 2017 (Date) before me, Meghan R. O Bra (Insert Name of Notary exactly as it appears on the official seal), Notary Public,

personally appeared Kathleen Beck (Name(s) of Signer(s)),

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 _____ (Signature of Notary Public)

MEGHAN R. O BRA
Commission # 2090276
Notary Public - California
Contra Costa County
My Comm. Expires Nov 16, 2018

Place Notary Seal Above

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 the form to another document.

Description of Attached Document

Title or Type of Document: Faithful Performance Bond

Document Date: October 24, 2017 Number of Pages: 2

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Kathleen Beck
- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner ☐ Limited ☐ General
- ☑ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer is Representing: SureTec Insurance Company

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT **CIVIL CODE § 1189**

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 Contra Costa,

On October 25, 2017 before me, **N. ACKERMAN, NOTARY PUBLIC**, personally appeared
(*Date*)

THOMAS A. BALDACCI who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

N. ACKERMAN
Commission # 2136117
Notary Public - California
Contra Costa County
My Comm. Expires Jan 6, 2020

Place Notary Seal Above

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 N Ackerman
Signature of Notary Public

----------***OPTIONAL***----------

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title of Type of Document: Exhibt "C" Improvement Securities

Document Date: _____ Number of Pages: _____

BOND NO. 4407807
INITIAL PREMIUM: Included in Performance Bond
SUBJECT TO RENEWAL

CITY OF MILPITAS

TRACT MAP NO. 10435 IMPROVEMENTS

LABOR AND MATERIAL BOND

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS the City of MILPITAS, California ("City") and Eastside San Ramon Partners, LLC, a California 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, sidewalks, storm drains, sanitary sewers, utilities, drainage facilities, traffic controls, landscaping, street lights, and all other required facilities for Tract Map No. 10435 ("Public Improvements");

WHEREAS, the Public Improvements to be performed by Principal are more particularly set forth in that certain Agreement for Completion of Pubic Improvements dated October 24, 2017 ("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 15 (commencing with section 3082) of Part 4 of Division 3 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 SureTec Insurance Company ("Surety"), a corporation organized and existing under the laws of the State of Texas, 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 material men, 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 AND SIXTY THOUSANDS DOLLARS, ($160,000), 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 in California Civil Code Section 3181, 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 15 (commencing with Section 3082) of Part 4 of Division 3 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 Concord, CA, this 24th day of October, 2017.

Eastside San Ramon Partners, LLC	SureTec Insurance Company
Principal By: St. Thomas Construction, Inc., its managing member	Surety
By:	By:
President	Attorney-in-Fact
Thomas A. Baldacci	Kathleen Beck, Attorney-in-Fact
(print name)	(print name)

NOTE: **APPROPRIATE NOTARIAL ACKNOWLEDGMENTS OF EXECUTION BY PRINCIPAL AND SURETY, AND A COPY OF THE POWER OF ATTORNEY TO LOCAL REPRESENTATIVES OF THE BONDING COMPANY MUST BE ATTACHED TO THIS BOND.**

POA #: 510579

SureTec Insurance Company

LIMITED POWER OF ATTORNEY

Know All Men by These Presents, That SURETEC INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Texas, and having its principal office in Houston, Harris County, Texas, does by these presents make, constitute and appoint

Kathleen Beck, Billy G. Bergan, Susan J. Peragallo

its true and lawful Attorney-in-fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include waivers to the conditions of contracts and consents of surety for:

Five Million and 00/100 Dollars ($5,000,000.00)

and to bind the Company thereby as fully and to the same extent as if such bond were signed by the President, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney-in-Fact may do in the premises. Said appointment shall continue in force until 10/31/2016 and is made under and by authority of the following resolutions of the Board of Directors of the SureTec Insurance Company:

Be it Resolved, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

Attorney-in-Fact may be given full power and authority for and in the name of and of behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

Be it Resolved, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached. *(Adopted at a meeting held on 20th of April, 1999.)*

In Witness Whereof, SURETEC INSURANCE COMPANY has caused these presents to be signed by its President, and its corporate seal to be hereto affixed this 21st day of November, A.D. 2014

SURETEC INSURANCE COMPANY

By: _____

John Knox Jr., President

State of Texas ss:
County of Harris

On this 21st day of November, A.D. 2014 before me personally came John Knox Jr., to me known, who, being by me duly sworn, did depose and say, that he resides in Houston, Texas, that he is President of SURETEC INSURANCE COMPANY, the company described in and which executed the above instrument; that he knows the seal of said Company; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Company; and that he signed his name thereto by like order.

JACQUELYN MALDONADO
Notary Public
State of Texas
My Comm. Exp. 5/18/2017

Jacquelyn Maldonado, Notary Public
My commission expires May 18, 2017

I, M. Brent Beaty, Assistant Secretary of SURETEC INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Company, which is still in full force and effect; and furthermore, the resolutions of the Board of Directors, set out in the Power of Attorney are in full force and effect.

Given under my hand and the seal of said Company at Houston, Texas this 24th day of October, 2017, A.D.

M. Brent Beaty, Assistant Secretary

Any instrument issued in excess of the penalty stated above is totally void and without any validity.
For verification of the authority of this power you may call (713) 812-0800 any business day between 8:00 am and 5:00 pm CST.

CALIFORNIA ALL-PURPOSE 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 Contra Costa

On October 24, 2017 (Date) before me, Meghan R. O Bra (Insert Name of Notary exactly as it appears on the official seal), Notary Public,

personally appeared Kathleen Beck (Name(s) of Signer(s))

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.

MEGHAN R. O BRA
Commission # 2090276
Notary Public - California
Contra Costa County
My Comm. Expires Nov 16, 2018

Witness my hand and official seal.

Signature _____ (Signature of Notary Public)

Place Notary Seal Above

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 the form to another document.

Description of Attached Document

Title or Type of Document: Labor and Materials Bond

Document Date: October 24, 2017 Number of Pages: 3

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Kathleen Beck
- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner ☐ Limited ☐ General
- ☑ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer is Representing: SureTec Insurance Company

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT **CIVIL CODE § 1189**

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 Contra Costa,

On October 25, 2017 (Date) before me, **N. ACKERMAN, NOTARY PUBLIC,** personally appeared **THOMAS A. BALDACCI** who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

N. ACKERMAN
Commission # 2136117
Notary Public - California
Contra Costa County
My Comm. Expires Jan 6, 2020

Place Notary Seal Above

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 N Ackerman

Signature of Notary Public

----------***OPTIONAL***----------

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title of Type of Document: City of Milpitas Tract Map No. 10435 Improvements

Document Date: _____ Number of Pages: _____

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Approve and Authorize the City Manager to Execute Amendment No. 1 to the Agreement with Group 4 Architecture, Research & Design for Space Planning and Design of Office Spaces at City Hall and Approve Related Budget Amendment**
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	10/6/2020Click or tap to enter a date.
Staff Contact:	Tony Ndah, Director of Public Works, 408-586-2602
Recommendation:	Approve and authorize the City Manager to execute Amendment No. 1 to the Agreement with Group 4 Architecture, Research & Design for Space Planning and Design of Office Spaces at City Hall, resulting in a decrease of the total not to exceed amount by $40,000 - from $150,000 to $110,000 - and approve a budget amendment returning the contractual savings to the General Government CIP Fund balance.

Background:
Milpitas City Hall was completed in 2003 and the floorplan of City Hall has remained largely unchanged over the years. As the City has grown, staffing levels have changed as well so as to continue a high level of services to the community. With these changes, the need for an evaluation of existing workspaces was identified in order to bring departments together and better utilize the work areas available at City Hall.

On December 4, 2018, the City Council approved and authorized the City Manager to execute an agreement with Group 4 Architecture, Research and Design (Group 4) for space planning and design of office spaces at City Hall. The contract scope of work included improving space efficiencies, improving workflow and modernizing workspace designs to meet the needs of current and future employees utilizing City Hall. The agreement with Group 4 expired on January 1, 2020.

Analysis:
Following Council approval of the agreement in December 2018, staff worked with Group 4 to complete conceptual designs, facility analysis, and needs assessment for City Hall. With the completion of the needs assessments for City Hall, Group 4 provided staff with space plan options, draft conceptual designs, and recommendations for City Hall, to account for the current and future workstation needs for City staff.

The COVID-19 pandemic has had an impact on the City's budget and on June 2, 2020, the City Council approved the FY 2020-21 Budget and Financial Plan solving a projected budget shortfall with ongoing expenditure reductions and the use of reserves. Since then, the economic impact related to COVID-19 has worsened with an additional significant impact to the City's FY 2020-21 General Fund revenues and the City's financial outlook. As such, on September 1, 2020, Council adopted a resolution approving and directing the City Manager to implement a list of COVID-19 fiscal response strategies and guidelines, which included bringing forward other budget balancing strategies for Council consideration.

Staff is proposing stopping work on this agreement which would result in a return of $40,000 of contractual savings to the General Government CIP Fund balance for future use. Staff will reexamine workspace needs at City Hall once the COVID-19 pandemic is over to account for current and future workstations needs for staff.

The agreement expired on January 1, 2020 and was not renewed prior to the expiration date. This amendment to the agreement would be retroactive to January 1, 2020 and would extend the term to October 6, 2020, to allow for the closeout of tasks currently in progress, while suspending work on other tasks due to the recent COVID-19 pandemic and return the funds to the General Government CIP Fund balance.

Policy Alternative:

Alternative: Do not execute Amendment No. 1 to the Agreement with Group 4.

Pros: No changes will need to be made to the existing agreement with Group 4.
Cons: Does not allow staff to close out the project and pay Group 4 for work performed.

Reason not recommended: Does not provide opportunity for City to close out the project, pay fees to Group 4, and return contractual savings to the General Government CIP Fund for future use.

Fiscal Impact:
This contract and budget amendment would result in the return $40,000 of contractual savings to the General Government CIP Fund balance for future use.

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

Recommendation:
Approve and authorize the City Manager to execute Amendment No. 1 to the Agreement with Group 4 Architecture, Research & Design for Space Planning and Design of Office Spaces at City Hall, resulting in a decrease of the total not to exceed amount by $40,000 from $150,000 to $110,000 and approve a budget amendment returning the contractual savings to the General Government CIP Fund balance.

Attachments:
Original 2019 Agreement with Group 4 for City Hall Space Planning
Amendment No. 1
Budget Change Form

CITY OF MILPITAS
DESIGN SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered into as of January 2, 20 19 by and between the City of Milpitas, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 ("City"), and **Group 4 Architecture Research + Planning, Inc.**, a California corporation with its principal place of business at **211 Linden Ave. South San Francisco CA 94080** (hereinafter referred to as "Designer"). City and Designer are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 City. City is a municipal corporation organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

2.2 Designer. Designer desires to perform and assume responsibility for the provision of certain professional design services required by the City on the terms and conditions set forth in this Agreement. Designer warrants that it is fully licensed, qualified, and willing to perform the services required by this Agreement; provided, however, that if Designer is a corporation or other organization, the Project Designer designated pursuant to Section 3.2, and not the Designer itself, shall be fully licensed to practice as an architect and/or engineer in the State of California.

2.3 Project. City desires to engage Designer to render such services for the **City Hall Space Planning Services** ("Project") as set forth in this Agreement.

3. TERMS

3.1 Employment of Designer.

3.1.1 Scope of Services. Designer promises and agrees to furnish to City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional design and related services necessary for the full and adequate completion of the Project consistent with the provisions of this Agreement (hereinafter referred to as "Services"). The Services are more particularly described throughout this Agreement, including Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, any exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. All Services performed by Designer shall be subject to the sole and discretionary approval of the City, which approval shall not be unreasonably withheld.

3.1.2 Term. The term of this Agreement shall be from **January 2, 2019 to January 1, 2020**, unless earlier terminated as provided herein. The City shall have the unilateral option, at its sole discretion, to renew this Agreement for no more than **four (4)** additional one-year terms. Designer shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3.2 Project Designer; Key Personnel.

3.2.1 Project Designer. Designer shall name a specific individual to act as Project Designer, subject to the approval of City. Designer hereby designates **Andrea Marie Gifford, Principal at Group 4 Architecture, Research + Planning, Inc. (License No. C32830)** to act as the Project Designer for the Project. The Project Designer shall: (1) maintain oversight of the Services; (2) have full authority to represent and act on behalf of the Designer for all purposes under this Agreement; (3) supervise and direct the Services consistent with the applicable professional standard of care set forth herein; (4) be responsible for the means, methods, techniques, sequences and procedures used for the Services; (5) adequately coordinate all portions of the Services; and (6) act as principal contact with City and all contractors, consultants, engineers and inspectors on the Project. Any change in the Project Designer shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld. The new Project Designer shall be of at least equal competence as the prior Project Designer. In the event that City and Designer cannot agree as to the substitution of a new Project Designer, City shall be entitled to terminate this Agreement for cause.

3.2.2 Key Personnel. In addition to the Project Designer, Designer has represented to the City that certain additional key personnel, engineers and consultants will perform the Services under this Agreement. Should one or more of such personnel, engineers or consultants become unavailable, Designer may substitute others of at least equal competence upon written approval of the City. In the event that City and Designer cannot agree as to the substitution of key personnel, engineers or consultants, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel, engineers or consultants who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Designer at the request of the City. The key additional personnel, engineers and consultants for performance of this Agreement are as follows: **Ben Irinaga, Associate at Group 4 Architecture, Research + Planning, Inc.; J. David Maino, Professional Engineer at Atium Engineering; and Theo Hartman, Project Engineer at Smith, Fause & McDonald, Inc.**

3.3 Hiring of Consultants and Personnel.

3.3.1 Right to Hire or Employ. Designer shall have the option, unless City objects in writing after notice, to employ at its expense architects, engineers, experts or other consultants qualified and licensed to render services in connection with the planning and/or administration of the Project, and to delegate to them such duties as Designer may delegate without relieving Designer from administrative or other responsibility under this Agreement. Designer shall be responsible for the coordination and cooperation of Designer's architects, engineers, experts or other consultants. All consultants, including changes in consultants, shall be subject to approval by City in its sole and reasonable discretion. Designer shall notify City of the identity of all consultants at least fourteen (14) days prior to their commencement of work to allow City to review their qualifications and approve to their participation on the Project in its sole and reasonable discretion.

3.3.2 Qualification and License. All architects, engineers, experts and other consultants retained by Designer in performance of this Agreement shall be qualified to perform the Services assigned to them, and shall be licensed to practice in their respective professions, where required by law.

3.3.3 Standards and Insurance. All architects, engineers, experts and other consultants hired by Designer shall be required to meet all of the same standards and insurance requirements set forth in this Agreement, unless other standards or requirements are approved by the City in writing. Unless changes are approved in writing by the City, Designer's agreements with its consultants shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.3.4 Assignments or Staff Changes. Designer shall promptly obtain written City approval of any assignment, reassignment or replacement of such architects, engineers, experts and consultants, or of other staff changes of key personnel working on the Project. As provided in the Agreement, any changes in Designer's consultants and key personnel shall be subject to approval by City.

3.3.5 Draftsman and Clerical Support. Draftsmen and clerical personnel shall be retained by Designer at Designer's sole expense.

3.4 Standard of Care.

3.4.1 Standard of Care. Designer shall perform all Services under this Agreement in a skillful and competent manner, consistent with the professional skill and care ordinarily provided by other reputable members of Designer's profession practicing in the same or similar locality under the same or similar circumstances. Designer shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. Designer shall be responsible to City for damages sustained by the City and delays to the Project as specified in the indemnification provision of this Agreement. Without limiting the foregoing, Designer shall be fully responsible to the City for any increased costs incurred by the City as a result of any such delays in the design or construction of the Project resulting from Designer's failure to meet the professional standard of care set forth herein. Designer warrants and represents that all of its employees, architects, engineers, experts and other consultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Designer represents that it, its employees, architects, engineers, experts and other consultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services assigned to or rendered by them and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Designer shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Designer's failure to comply with the standard of care provided for herein.

3.4.2 Performance of Employees. Any employee or consultant who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee or consultant who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Designer and shall not be re-employed to perform any of the Services or to work on the Project.

3.5 Laws and Regulations.

3.5.1 Knowledge and Compliance. Consistent with and without increasing the standard of care set forth herein, Designer shall keep itself fully informed of and in compliance with all applicable local, state and federal laws, rules and regulations in any manner affecting the performance of the Services or the Project, and shall give all notices required of the Designer by

law. Designer shall be liable, pursuant to the standard of care and indemnification provisions of this Agreement, for all violations of such laws and regulations in connection with its Services. If the Designer performs any work knowing it to be contrary to such laws, rules and regulations, Designer shall be solely responsible for all costs arising therefrom. Designer shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.5.2 Drawings and Specifications. Consistent with and without increasing the standard of care set forth herein, Designer shall to cause all drawings and specifications to conform to any applicable requirements of federal, state and local laws, rules and regulations, including the Uniform Building Code, in effect as of the time the drawings and specifications are prepared or revised during the latest phase of the Services described in Exhibit "A" attached hereto. Any significant revisions made necessary by changes in such laws, rules and regulations after this time may be compensated as Additional Services which were not known or reasonably should not have been known by Designer. Designer shall cause the necessary copies of such drawings and specifications to be filed with any governmental bodies with approval jurisdiction over the Project, in accordance with the Services described in Exhibit "A" attached hereto. For the preparation of all such drawings and specifications, the Designer shall use Computer Aided Design Drafting ("CADD") (e.g., AutoCAD) or other technology acceptable to the Designer and City.

3.5.3 Americans with Disabilities Act. Consistent with and without increasing the standard of care set forth herein, Designer will interpret and apply all applicable federal, state and local laws, rules and regulations with respect to access, including those of the Americans with Disabilities Act ("ADA"). Designer shall inform City of the existence of inconsistencies of which it is aware or reasonably should be aware between federal and state accessibility laws, rules and regulations, as well as any other issues which are subject to conflicting interpretations of the law, and shall provide the City with its interpretation of such inconsistencies and conflicting interpretations. Unless Designer brings such inconsistencies and conflicting interpretations to the attention of the City and requests City's direction on how to proceed, the Designer's interpretation of such inconsistencies and conflicting interpretations shall be the sole responsibility and liability of Designer, and the Designer shall correct all plans, specifications and other documents prepared for the Project at no additional cost if its interpretations are shown to be incorrect. In the event that the Designer request's City's direction on how to proceed with respect to any inconsistent and/or conflicting interpretation, the Designer shall be responsible to the City only pursuant to the indemnification provisions of this Agreement.

3.5.4 Permits, Approvals and Authorizations. Designer shall provide City with a list of all permits, approvals or other authorizations required for the Project from all federal, state or local governmental bodies with approval jurisdiction over the Project. Designer shall then assist the City in obtaining all such permits, approvals and other authorizations. The costs of such permits, approvals and other authorizations shall be paid by the City.

3.5.5 Water Quality Management and Compliance.

(a) Compliance with Water Quality Laws, Ordinances and Regulations. Designer shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the City's ordinances regulating water quality and storm water; the Federal Water

Pollution Control Act (33 U.S.C. § 1251 *et seq.*); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); and any and all regulations, policies, or permits issued pursuant to any such authority. Designer shall additionally comply with the lawful requirements of the City, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges.

(b) Standard of Care. Designer warrants that all employees and subcontractors shall have sufficient skill and experience to perform the work assigned to them without impacting water quality in violation of the laws, regulations and policies described in Sections 3.5.5(a) of this Agreement. Designer further warrants that it, its employees and subcontractors will receive adequate training, as determined by the City, regarding these requirements as they may relate to the Services.

(c) Liability for Non-compliance.

(i) Indemnity: Failure to comply with laws, regulations, and ordinances listed in Sections 3.5.5(a) of this Agreement is a violation of federal and state law. Notwithstanding any other indemnity contained in this Agreement, Designer agrees to indemnify and hold harmless the City, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the City, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the laws, regulations, and ordinances listed above, arising out of or in connection with the Services, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers.

(ii) Defense: City reserves the right to defend any enforcement action or civil action brought against the City for Designer's failure to comply with any applicable water quality law, regulation, or policy. Designer hereby agrees to be bound by, and to reimburse the City for the costs associated with, any settlement reached between the City and the relevant enforcement entity.

(iii) Damages: City may seek damages from Designer for delay in completing the Services caused by Designer's failure to comply with the laws, regulations and policies described in Section 3.5.5(a) of this Agreement, or any other relevant water quality law, regulation, or policy.

3.6 Independent Contractor.

3.6.1 Control and Payment of Subordinates: City retains Designer on an independent contractor basis and Designer is not an employee of City. Designer is not an employee for state tax, federal tax or any other purpose, and is not entitled to the rights or benefits afforded to City's employees. Any additional personnel performing the Services under this Agreement on behalf of Designer shall also not be employees of City, and shall at all times be under Designer's exclusive direction and control. Designer shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Designer shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.7 Schedule of Services.

3.7.1 Designer Services. Designer shall fully and adequately complete the Services described in this Agreement and in Exhibit "A" attached hereto and incorporated herein by reference.

3.7.2 Timely Performance Standard. Designer shall perform all Services hereunder as expeditiously as is consistent with professional skill and care, as well as the orderly progress of the Project work so as not to be the cause, in whole or in part, of delays in the completion of the Project or in the achievement of any Project milestones, as provided herein. Specifically, Designer shall perform its Services so as to allow for the full and adequate completion of the Project within the time required by the City and within any completion schedules adopted for the Project. Designer agrees to coordinate with City's staff, contractors and consultants in the performance of the Services, and shall be available to City's staff, contractors and consultants at all reasonable times.

3.7.3 Performance Schedule. Designer shall prepare an estimated time schedule for the performance of Designer's Services, to be adjusted as the Project proceeds. Such schedule shall be subject to the City's review and approval, which approval shall not be unreasonably withheld, and shall include allowances for periods of time required for City's review and approval of submissions, and for approvals of authorities having jurisdiction over Project approval and funding. If City and Designer cannot mutually agree on a performance schedule, City shall have the authority to immediately terminate this Agreement. The schedule shall not be exceeded by Designer without the prior written approval of City. If the Designer's Services are not completed within the time provided by the agreed upon performance schedule, or any milestones established therein due to Designer's failure to meet the professional standard of care set forth herein, it is understood, acknowledged and agreed that the City will suffer damage for which the Designer will be responsible pursuant to the indemnification provision of this Agreement.

3.7.4 Excusable Delays. Any delays in Designer's work caused by the following shall be added to the time for completion of any obligations of Designer: (1) the actions of City or its employees; (2) the actions of those in direct contractual relationship with City; (3) the actions of any governmental agency having jurisdiction over the Project; (4) the actions of any parties not within the reasonable control of the Designer; and (5) any act of God or other unforeseen occurrence not due to any fault or negligence on the part of Designer. Neither the City nor the Designer shall be liable for damages, liquidated or otherwise, to the other on account of such delays.

3.7.5 Request for Excusable Delay Credit. The Designer shall, within fifteen (15) calendar days of the beginning of any excusable delay, notify the City in writing of the causes of delay (unless City grants in writing a further period of time to file such notice prior to the date of final payment under the Agreement). City will then ascertain the facts and the extent of the delay, and grant an extension of time for completing the Services when, in its sole judgment, the findings of fact justify such an extension. The City's findings of fact thereon shall be final and conclusive on the parties. Extensions of time shall apply only to that portion of the Services affected by the delay and shall not apply to other portions of the Services not so affected. The sole remedy of Designer for extensions of time shall be an extension of the performance time at no cost to the City. If Additional Services are required as a result of an excusable delay, the parties shall mutually agree thereto pursuant to the Additional Services provision of this Agreement. Should Designer make an application for an extension of time, Designer shall submit evidence that the

insurance policies required by this Agreement remain in effect during the requested additional period of time.

3.8 Additional Designer Services.

3.8.1 Request for Services. At City's request, Designer may be asked to perform services not otherwise included in this Agreement, not included within the basic services listed in Exhibit "A" attached hereto, and/or not customarily furnished in accordance with generally accepted design practice.

3.8.2 Definition. As used herein, "Additional Services" mean: (1) any work which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary for the Designer to perform at the execution of this Agreement; or (2) any work listed as Additional Services in Exhibit "A" attached hereto. Designer shall not perform, nor be compensated for, Additional Services without prior written authorization from City and without an agreement between the City and Designer as to the compensation to be paid for such services. City shall pay Designer for any approved Additional Services, pursuant to the compensation provisions herein, so long as such services are not made necessary through the fault of Designer pursuant to the indemnification provision of this Agreement.

3.8.3 Examples of Additional Services. Such Additional Services shall not include any redesign or revisions to drawings, specifications or other documents when such revisions are necessary in order to bring such documents into compliance with applicable laws, rules, regulations or codes of which Designer was aware or should have been aware pursuant to the laws and regulations provision of this Agreement above. Such Additional Services may include, but shall not be limited to:

(a) Separately Bid Portions of Project. Plan preparation and/or administration of work on portions of the Project separately bid.

(b) Furniture and Interior Design. Assistance to City, if requested, for the selection of moveable furniture, equipment or articles which are not included in the Construction Documents.

(c) Fault of Contractor. Services caused by delinquency, default or insolvency of contractor, or by major defects in the work of the contractor, provided that any such services made necessary by the failure of Designer to detect and report such matters when it reasonably should have done so shall not be compensated.

(d) Inconsistent Approvals or Instructions. Revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given and are due to causes beyond the control of Designer.

(e) Legal Proceedings. Serving as an expert witness on City's behalf or attending legal proceedings to which the Designer is not a party.

(f) Damage Repair. Supervision of repair of damages to any structure.

(g) Extra Environmental Services. Additional work required for environmental conditions (e.g. asbestos or site conditions) not already contemplated within the Designer's services for the Project.

3.9 City Responsibilities. City's responsibilities shall include the following:

3.9.1 Data and Information. City shall make available to Designer all necessary data and information concerning the purpose and requirements of the Project, including scheduling and budget limitations, objectives, constraints and criteria. As part of the budget limitation information, the City shall provide the Designer with a preliminary construction budget ("City's Preliminary Construction Budget").

3.9.2 Project Survey. If required pursuant to the scope of the Project and if requested by Designer, City shall furnish Designer with, or direct Designer to procure at City's expense, a survey of the Project site prepared by a registered surveyor or civil engineer, any other record documents which shall indicate existing structures, land features, improvements, sewer, water, gas, electrical and utility lines, topographical information and boundary dimensions of the site, and any other such pertinent information.

3.9.3 Bid Phase. Distribute Construction Documents to bidders and conduct the opening and review of bids for the Project.

3.9.4 Testing. Retain consultant(s) to conduct chemical, mechanical, soils, geological or other tests required for proper design of the Project, and furnish such surveys, borings, test pits, and other tests as may be necessary to reveal conditions of the site which must be known to determine soil condition or to ensure the proper development of the required drawings and specifications.

3.9.5 Required Inspections and Tests. Retain consultant(s) to conduct materials testing and inspection or environmental/hazardous materials testing and inspection pursuant to any applicable laws, rules or regulations.

3.9.6 Fees of Reviewing or Licensing Agencies. Directly pay or reimburse the payment of all fees required by any reviewing or licensing agency, or other agency having approval jurisdiction over the Project.

3.9.7 City's Representative. The City hereby designates the City Manager, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. The City Manager hereby designates **Tony Ndah, Director of Public Works** or his or her designee, as the City's contact for the implementation of the Services hereunder. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.9.8 Review and Approved Documents. Review all documents submitted by Designer, including change orders and other matters requiring approval by the City Council or other officials. City shall advise Designer of decisions pertaining to such documents within a reasonable time after submission, so as not to cause unreasonable delay as provided in the excusable delay provisions of this Agreement above.

3.10 Compensation.

3.10.1 Designer's Compensation for Basic Services. City shall pay to Designer, for the performance of all Services rendered under this Agreement, the total not to exceed amount of **One Hundred Fifty Thousand Dollars and Zero Cents ($150,000.00)** "Total Compensation"). This Total Compensation amount shall be based upon, and may be adjusted according to, the fee schedule and related terms and conditions attached hereto as Exhibit "B" and incorporated herein by reference. The Total Compensation, as may be adjusted upon mutual agreement, shall constitute complete and adequate payment for Services under this Agreement.

3.10.2 Payment for Additional Services. At any time during the term of this Agreement, City may request that Designer perform Additional Services. As used herein, Additional Services means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Any additional work in excess of this amount must be approved by the City. If authorized, such Additional Services will be compensated at the rates and in the manner set forth in Exhibit "C" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the parties. If City requires Designer to hire consultants to perform any Additional Services, Designer shall be compensated therefore at the rates and in the manner set forth in Exhibit "C" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the parties. City shall have the authority to review and approve the rates of any such consultants. In addition, Designer shall be reimbursed for any expenses incurred by such consultants pursuant to the terms and conditions of Section 3.10.3.

3.10.3 Reimbursable Expenses. Reimbursable expenses are in addition to compensation for the Services and Additional Services. Designer shall not be reimbursed for any expenses unless authorized in writing by City, which approval may be evidenced by inclusion in Exhibit "C" attached hereto. Such reimbursable expenses shall include only those expenses which are reasonably and necessarily incurred by Designer in the interest of the Project. Designer shall be required to acquire prior written consent in order to obtain reimbursement for the following: (1) extraordinary transportation expenses incurred in connection with the Project; (2) out-of-town travel expenses incurred in connection with the Project; (3) fees paid for securing approval of authorities having jurisdiction over the Project; (4) bid document duplication costs in excess of One Thousand Dollars and Zero Cents ($1,000.00); and (5) other costs, fees and expenses in excess of One Thousand Dollars and Zero Cents ($1,000.00).

3.10.4 Payment to Designer. Designer's compensation and reimbursable expenses shall be paid by City to Designer no more often than monthly. Such periodic payments shall be made based upon the percentage of work completed, and in accordance with the phasing and funding schedule provided in Exhibit "B" and the compensation rates indicated in Exhibit "C" attached hereto and incorporated herein by reference. In order to receive payment, Designer shall present to City an itemized statement which indicates Services performed, percentage of Services completed, method for computing the amount payable, and the amount to be paid. The statement shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement, as well as those expenses for which reimbursement is requested for that statement period. The amount paid to Designer shall never exceed the percentage amounts authorized by the phasing and funding schedule located in Exhibit "B" attached hereto. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the parties in a mutually agreeable manner.

Payments made for Additional Services shall be made in installments, not more often than monthly, proportionate to the degree of completion of such services or in such other manner as the parties shall specify when such services are agreed upon, and in accordance with any authorized fee or rate schedule. In order to receive payment, Designer shall present to City an itemized statement which indicates the Additional Services performed, percentage of Additional Services completed, method for computing the amount payable, and the amount to be paid. The statement shall describe the amount of Additional Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the parties in a mutually agreeable manner.

Upon cancellation or termination of this Agreement, Designer shall be compensated as set forth in the termination provision herein.

3.10.5 Withholding Payment to Designer. The City may withhold payment, in whole or in part, to the extent reasonably necessary to protect the City from claims, demands, causes of action, costs, expenses, liabilities, losses, damages, or injuries of any kind to the extent arising out of or caused by the negligence, recklessness, or willful misconduct protected under the indemnification provisions of this Agreement. Failure by City to deduct any sums from a progress payment shall not constitute a waiver of the City's right to such sums. The City may keep any moneys which would otherwise be payable at any time hereunder and apply the same, or so much as may be necessary therefor, to the payment of any expenses, losses, or damages as determined by the City, incurred by the City for which Designer is liable under the Agreement or state law. Payments to the Designer for compensation and reimbursable expenses due shall not be contingent on the construction, completion or ultimate success of the Project. Payment to the Designer shall not be withheld, postponed, or made contingent upon receipt by the City of offsetting reimbursement or credit from parties not within the Designer's reasonable control.

3.10.6 Prevailing Wages. Designer is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is One Thousand Dollars and Zero Cents ($1,000.00) or more, Designer agrees to fully comply with and to require its consultants to fully comply with such Prevailing Wage Laws. City shall provide Designer with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Designer shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Designer's principal place of business and at the Project site. Designer shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure of the Designer or its consultants to comply with the Prevailing Wage Laws. It shall be mandatory upon the Designer and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public

works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

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

3.10.8 Labor Compliance. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Designer's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Designer or any subcontractor that affect Designer's performance of Services, including any delay, shall be Designer's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Designer caused delay and shall not be compensable by the City. Designer 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 Designer or any subcontractor.

3.11 Notice to Proceed.

Designer shall not proceed with performance of any Services under this Agreement unless and until the City provides a written notice to proceed.

3.12 Termination, Suspension and Abandonment.

3.12.1 Grounds for Termination; Designer's Termination for Cause. City hereby reserves the right to suspend or abandon, at any time and for any reason, all or any portion of the Project and the construction work thereon, or to terminate this Agreement at any time with or without cause. Designer shall be provided with at least seven (7) days advanced written notice of such suspension, abandonment or termination. In the event of such suspension, abandonment or termination, Designer shall be paid for Services and reimbursable expenses rendered up to the date of such suspension, abandonment or termination, pursuant to the schedule of payments provided for in this Agreement, less any claims against or damages suffered by City as a result of the default, if any, by Designer. Designer hereby expressly waives any and all claims for damages or compensation arising under this Agreement, except as set forth herein, in the event of such suspension, abandonment or termination. Designer may terminate this Agreement for substantial breach of performance by the City such as failure to make payment to Designer as provided in this Agreement.

3.12.2 City's Suspension of Work. If Designer's Services are suspended by City, City may require Designer to resume such Services within ninety (90) days after written notice from City. When the Project is resumed, the Total Compensation and schedule of Services shall be equitably adjusted upon mutual agreement of the City and Designer.

3.12.3 Documents and Other Data. Upon suspension, abandonm termination, Designer shall provide to City all preliminary studies, sketches, workin

specifications, computations, and all other Project Documents, as defined below, to which City would have been entitled at the completion of Designer's Services under this Agreement. Upon payment of the amount required to be paid to Designer pursuant to the termination provisions of this Agreement, City shall have the rights, as provided in this Agreement hereinafter, to use such Project Documents prepared by or on behalf of Designer under this Agreement. Designer shall make such documents available to City upon request and without additional compensation other than as may be approved as a reimbursable expense.

3.12.4 Employment of other Designers. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.13 Ownership and Use of Documents; Confidentiality.

3.13.1 Ownership. All plans, specifications, original or reproducible transparencies of working drawings and master plans, preliminary sketches, design presentation drawings, structural computations, estimates and any other documents prepared pursuant to this Agreement, including, but not limited to, any other works of authorship fixed in any tangible medium of expression such as writings, physical drawings and data magnetically or otherwise recorded on computer diskettes (hereinafter referred to as the "Project Documents") shall be and remain the property of City. Although the official copyright in all Project Documents shall remain with the Designer or other applicable subcontractors or consultants, the Project Documents shall be the property of City whether or not the work for which they were made is executed or completed. Within thirty (30) calendar days following completion of the Project, Designer shall provide to City copies of all Project Documents required by City. In addition, Designer shall retain copies of all Project Documents on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to City upon the payment of reasonable duplication costs. Before destroying the Project Documents following this retention period, Designer shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.13.2 Right to Use. Designer grants to City the right to use and reuse all or part of the Project Documents, at City's sole discretion and with no additional compensation to Designer, for the following purposes:

(a) The construction of all or part of this Project.

(b) The repair, renovation, modernization, replacement, reconstruction or expansion of this Project at any time;

(c) The construction of another project by or on behalf of the City for its ownership and use;

City is not bound by this Agreement to employ the services of Designer in the event such documents are used or reused for these purposes. City shall be able to use or reuse the Project Documents for these purposes without risk of liability to the Designer or third parties with respect to the condition of the Project Documents, and the use or reuse of the Project Documents for these purposes shall not be construed or interpreted to waive or limit City's right to recover for latent defects or for errors or omissions of the Designer.

Any use or reuse by City of the Project Documents on any project other than this Project without employing the services of Designer shall be at City's own risk with respect to third parties. If City uses or reuses the Project Documents on any project other than this Project, it shall remove the Designer's seal from the Project Documents and hold harmless Designer and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Project Documents on such other project.

3.13.3 License. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify or reuse any and all Project Documents and any intellectual property rights therein. Designer shall require any and all subcontractors and consultants to agree in writing that City is granted a non-exclusive and perpetual license for the work of such subcontractors or consultants performed pursuant to this Agreement.

3.13.4 Right to License. Designer represents and warrants that Designer has the legal right to license any and all copyrights, designs and other intellectual property embodied in the Project Documents that Designer prepares or causes to be prepared pursuant to this Agreement. Designer shall indemnify and hold City harmless pursuant to the indemnification provisions of this Agreement for any breach of this Section. Designer makes no such representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents that were prepared by design professionals other than Designer and provided to Designer by City.

3.13.5 Confidentiality. All Project Documents, either created by or provided to Designer in connection with the performance of this Agreement, shall be held confidential by Designer to the extent they are not subject to disclosure pursuant to the Public Records Act. All Project Documents shall not, without the written consent of City, be used or reproduced by Designer for any purposes other than the performance of the Services. Designer shall not disclose, cause or facilitate the disclosure of the Project Documents to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Designer which is otherwise known to Designer or is generally known, or has become known, to the related industry shall be deemed confidential. Designer shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the written consent of City.

3.14 Indemnification.

3.14.1 To the fullest extent permitted by law where Designer is performing services that do not qualify as "design professional" services as described in Section 3.14.2, Designer shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Designer, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Designer's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Designer's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Designer, the City, its officials, officers, employees, agents, or volunteers.

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

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

3.16 Records.

Designer shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Designer shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Designer shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of five (5) years from the date of final payment under this Agreement.

3.17 Standardized Manufactured Items.

Designer shall cooperate and consult with City in the use and selection of manufactured items on the Project, including but not limited to, paint, hardware, plumbing, mechanical and electrical equipment, fixtures, roofing materials and floor coverings. All such manufactured items shall be standardized to City's criteria to the extent such criteria do not interfere with building design.

3.18 Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described herein. Any additional or subsequent construction at the site of the Project, or at any other City site, will be covered by, and be the subject of, a separate Agreement for design services between City and the designer chosen therefor by City.

3.19 Mediation.

Disputes arising from this Agreement may be submitted to mediation if mutually agreeable to the parties hereto. The type and process of mediation to be utilized shall be subject to the mutual agreement of the parties.

3.20 Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However,

Designer shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

3.21 Asbestos Certification.

Designer shall certify to City, in writing and under penalty of perjury, that to the best of its knowledge, information and belief no asbestos-containing material or other material deemed to be hazardous by the state or federal government was specified as a building material in any construction document that the Designer prepares for the Project. Designer shall require all consultants who prepare any other documents for the Project to submit the same written certification. Designer shall also assist the City in ensuring that contractors provide City with certification, in writing and under penalty of perjury, that to the best of their knowledge, information and belief no material furnished, installed or incorporated into the Project contains asbestos or any other material deemed to be hazardous by the state or federal government. These certifications shall be part of the final Project submittal. Designer shall include statements in its specifications that materials containing asbestos or any other material deemed to be hazardous by the state or federal government are not to be included.

3.22 No Third Party Rights.

This Agreement shall not create any rights in, or inure to the benefits of, any third party except as expressly provided herein.

3.23 Governing Law.

This Agreement shall be construed in accordance with, and governed by, the laws of the State of California. Venue shall be in Santa Clara County.

3.24 Exhibits and Recitals.

All exhibits and recitals contained herein and attached hereto are material parts of this Agreement and are incorporated as if fully set forth.

3.25 Severability.

Should any provision in the Agreement be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.

3.26 Non-Waiver.

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

3.27 Safety.

Consistent with and without increasing the standard of care set forth herein, Designer shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Designer shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the

safety of its employees, consultant and subcontractors appropriate to the nature of the work and the conditions under which the work is to be performed.

3.28 Harassment Policy.

Designer shall provide a copy of the City's Harassment Policy to each of its employees assigned to perform the tasks under this Agreement. Designer shall submit to the City's Personnel Manager a statement signed by each of its employees who are assigned to perform the Services under this Agreement certifying receipt of City's Harassment Policy and certifying that they have read the Harassment Policy. A finding by the City that any of Designer's employees has harassed a City employee shall be grounds for appropriate discipline, up to and including such employee's removal from performance of this Agreement at City's request.

3.29 Delivery of Notices.

All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

CITY:	CONSULTANT:
City of Milpitas	Group 4 Architecture Research + Planning, Inc
455 E. Calaveras Boulevard	211 Linden Avenue
Milpitas, California 95035	South San Francisco, CA 94080
Attn: City Manager	Attn: Andrea Gifford

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.30 Time of Essence.

Consistent with and without increasing the standard of care set forth herein, Designer shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

3.31 City's Right to Employ Other Consultants.

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

3.32 Prohibited Interests.

3.32.1 Solicitation. Designer maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Designer, to solicit or secure this Agreement. Further, Designer warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Designer, any

fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability.

3.32.2 Conflict of Interest. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.33 Equal Opportunity Employment.

Designer represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or any other classification protected by federal or state law. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Designer shall also comply with all relevant provisions of City's minority business enterprise program, affirmative action plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.34 Labor Certification.

By its signature hereunder, Designer certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.35 Wage Theft Certification.

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

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

3.35.3 If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that Designer or a subconsultant it employs to perform work under this Agreement has violated any applicable wage and hour law, or Designer learns of such a judgment, decision, or order that was not previously

disclosed in its bid/proposal, Designer shall inform the City no more than fifteen (15) calendar days after the judgment, decision or order becomes final or from the date of learning of the final judgment, decision or order. Designer or its subconsultant(s) shall, within thirty (30) calendar days after notifying the City, either (i) fully satisfy any such judgment, decision, or order and provide the City with documentary evidence of satisfying said judgment, decision or order; or (ii) provide the City documentary evidence of a payment or other alternative plan approved by the court/government agency to satisfy the judgment, decision or order. If the Designer or its subconsultant is subject to a payment or other alternative plan, the Designer or its subconsultant shall continue to submit documentary evidence every thirty (30) calendar days during the term of the Agreement demonstrating continued compliance with the plan until the judgment, decision or order has been fully satisfied.

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

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

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

3.36 Subcontracting.

As specified in this Agreement, Designer shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to each and every provision of this Agreement.

3.37 Supplemental Conditions.

Any supplemental conditions shall be attached as an exhibit to this Agreement, and that exhibit shall be incorporated herein by reference.

3.38 Entire Agreement.

This Agreement, with its exhibits, contains the entire agreement of the parties hereto, and supersedes any and all other prior or contemporaneous negotiations, understandings and oral or written agreements between the parties hereto. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing signed by all parties hereto.

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE FOR DESIGN SERVICES AGREEMENT
BETWEEN THE CITY OF MILPITAS
AND GROUP 4 ARCHITECTURE RESEARCH + PLANNING, INC.

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

CITY OF MILPITAS
Approved By:

Julie Edmonds-Mares
City Manager

1·8·19
Date

Approved As To Form:

Christopher J. Diaz
City Attorney

Approved As To Content:

12/31/18
Will Fuentes
Director of Financial Services

Approved As To Scope

Tony Ndah
Director of Public Works

GROUP 4 ARCHITECTURE, RESEARCH + PLANNING, INC.

Signature

Andrea Gifford
Name

Principal
Title

December 12, 2018
Date

EXHIBIT "A"

DESIGNER'S SCOPE OF SERVICES

1. THE PROJECT

The Project consists of an assessment and space planning of the City of Milpitas's office spaces and interior improvements to the Council Chambers located at 455 E. Calaveras Blvd., Milpitas CA. The departments included in this study are: Building & Safety, Human Resources, Planning & Neighborhood Services, City Council, City Attorney, City Clerk, City Manager, Finance, Economic Development, and Engineering.

The assessment and space planning will include an analysis of existing and future office needs including spatial needs, staffing levels and departmental adjacencies. The analysis will include industry best practices, employee work area sizes and amenities. The objectives of the space plan are to:

- Identify each department's current and future staffing levels as well as associated space and adjacency needs;
- Evaluate each department's current location and adjacencies and identify strategies to improve workflow and efficiency;
- Identify trending industry best practices related to workplace and public facilities

2. GENERAL REQUIREMENTS.

2.1 Basic Services. Designer agrees to perform all the necessary professional design and engineering (e.g. electrical, and AV/low voltage) services for the Project in a timely and professional manner, consistent with the standards of the profession, including those provided for herein.

2.2 The Consultant's Basic Services include preparing bid documents for improving the presentation podium and providing a staff work counter in the City Council Chambers and developing a strategic needs assessment and conceptual office layout for the Milpitas City Hall.

2.3 In selecting the Consultant, the City recognizes that the Consultant has the qualifications to provide full planning, architecture, and interior design services including schematic design, design development, construction documents, bidding, construction administration, and post-construction phase services. The City, at its discretion, may choose to amend this contract to add services to the Consultant's Scope of Services for Additional Compensation if mutually agreed to by the City and Consultant.

2.4 The Consultant may conduct half of the specified Project Management Team (PMT) meetings via web conference unless remote PMT meetings can be coordinated with other project or planning workshops requiring in-person attendance.

2.5 The City shall provide the following for the Project as needed:

2.5.1 A City representative who can render decisions on behalf of the Project in a timely manner.

2.5.2 Scheduling and invitations for project meetings.

2.5.3 Information about previous analysis, polls, studies and information relevant to developing the work.

2.5.4 Services of other consultants, engineers or specialized consultants if needed for the Project.

Printing of meeting agendas, exhibits and deliverables for each of the Tasks listed below.

2.6 Any other information not included in Consultant's Basic Services that is reasonably needed for the Project.

2.7 Exclusions from Basic Services. The following services shall be excluded from the basic services listed above: civil engineering, landscape architectural, soils engineering, geotechnical services, hazardous waste or toxic substances engineering, structural engineer, mechanical or plumbing engineering or lighting design.

2.8 Additional Services. Designer shall perform the following Additional Services for the Project: "N/A"

2.9 Communication with City. Designer shall participate in consultations and conferences with authorized representatives of City and/or other local, regional, or state agencies concerned with the Project, which may be necessary for the completion of the Project or the development of the drawings, specifications and documents in accordance with the applicable standards and requirements of law and the City. Such consultations and conferences shall continue throughout the planning and construction of the Project and the contractor's warranty period. Designer shall take direction only from the City's Representative, or any other representative specifically designated by the City for this Project, including any construction manager hired by the City.

2.10 Coordination and Cooperation with Construction Manager. The City may hire a construction manager to administer and coordinate all or any part of the Project on its behalf. If the City does so, it shall provide a copy of its agreement with the construction manager so that the Designer will be fully aware of the duties and responsibilities of the construction manager. The Designer shall cooperate with the construction manager and respond to any requests or directives authorized by the City to be made or given by the construction manager. The Designer shall request clarification from the City in writing if the Designer should have any questions regarding the authority of the construction manager.

3. TASK 1: COUNCIL CHAMBER IMPROVEMENTS

3.1 Task 1A Conceptual Design. The Consultant will:

3.1.1 Perform a visual survey of the Council Chambers in the company of the City's designated representatives to review the state of the City's existing presentation podium.

3.1.2 Evaluate existing conditions and identify options for new presentation podium and staff work counter

3.1.3 Present options at a PMT meeting with City staff and stakeholders and other designated representatives.

3.1.4 Update preferred option based on the City's feedback and comments

3.1.5 Prepare conceptual level cost plan based on the preferred option.

3.1.6 Present the conceptual design plan and cost to the PMT.

3.2 Task 1B Construction Documents. The Consultant will:

3.2.1 Field verify and develop base drawings for existing architectural and electric conditions in areas where new work will be performed. Verification will be limited to those features that are readily accessible on foot or visible without the removal of ceiling tiles, wall and floor finishes, etc. The Contractor will be required to field verify all conditions during construction. These drawings will be the basis for the construction documents.

3.2.2 Develop construction documents, including outline specifications, up to 90% completion. Construction documents shall conform to ADA, California Title 24 building codes, and City ordinances.

3.2.3 Conduct a review of the construction documents with the City Project Manager, stakeholder representative, and design team.

3.2.4 Select a finish palette for the renovation that will be compatible functionally and aesthetically with the existing conditions to remain.

3.2.5 Prepare and submit construction documents to plan check as required by the City.

3.2.6 Prepare and Resubmit document revisions based on plan check comments for back check by the City. Task is considered complete upon obtaining the building permit.

3.3 Meetings:

3.3.1 Three (3) PMT Meetings (concurrent with Task 2 PMT Meetings)

3.3.2 Facility Tour (concurrent with Task 2 Facility Tour)

3.4 Deliverables: Project Work Plan and Schedule; Meeting agendas, exhibits, and summary minutes of each meeting; Base drawings for Council Chambers; Conceptual design plans and budget; Plan check submittal; Bid set; ASI's as required.

4. TASK 2: PLANNING AND NEEDS ASSESSMENTS

4.1 Task 2A Project Initiation. The Consultant will:

4.1.1 Facilitate a kickoff meeting with the Project Management Team (PMT) to confirm project goals and objectives; review the project work plan, schedule, and budget; and confirm project management and communications tools and protocols.

4.1.2 Confirm the project participation plan and set target dates for the Planning Workshops.

4.1.3 Review City-provided documents, including existing site and floor plans; relevant previous studies (e.g., organizational, staffing, facility studies); organizational growth and development information.

4.2 Task 2B Facilities Analysis. Concurrent with Needs Assessment tasks, the Consultant will:

4.2.1 Tour the facility with City representatives knowledgeable about current services and operations to observe and confirm the building layout, departmental utilization, current room assignments, number of personnel/quantities of work stations, functional adjacencies, support areas and amenities.

4.2.2 Prepare base drawings for the facility based on available documents and information.

4.3 Task 2C Needs Assessment. The Consultant will:

4.3.1 Review industry standards, trends, and best practices in work environments, including, discussing opportunities for operational efficiencies, collaboration spaces, and other health and wellbeing benefits, and compiling recommendations aligned with City goals.

4.3.2 Develop facility standards for enclosed office, open workstation and meeting/collaboration spaces.

4.3.3 Prepare two draft surveys for PMT review and confirmation before digital distribution:

(a) Department head survey regarding current and projected department staffing; current and anticipated future services and work trends; and inter-department collaboration needs and goals.

(b) Staff user survey about day to day needs for work and support space, as well as intra- and inter-departmental collaborations

4.3.4 Compile and summarize the results of both surveys for PMT review.

4.3.5 Conduct department interviews – in person and via web conference – with key department representatives to confirm understanding of current and future organizational, service, staffing, and work needs and facility standards that will shape the development of the space plan options.

4.3.6 Evaluate the existing furniture systems and other existing office furnishings to determine the potential for reuse.

4.3.7 Assess the City's current parking at City Hall and identify opportunities and efficiencies.

4.3.8 Summarize current space allocations and prepare a draft statement of current and future space needs, facility observations, space assessment and current and projected space and adjacency needs for each City department.

4.3.9 Distribute draft of the findings to each of the departments or major division for their review and comment. Incorporate the review comments and clarifications into draft space needs assessment, where further discussion may be warranted the Consultant shall work with the department or major division representative to finalize the space need recommendations.

4.4 Meetings:

4.4.1 Three (3) PMT Meetings

4.4.2 Facility Tour

4.4.3 Department Interviews over 2 days

4.5 Deliverables: Project Work Plan and Schedule; Meeting agendas, exhibits, and summary minutes of each meeting; Base drawings for City Hall; Survey instruments; City Hall statement of space needs.

5. TASK 3: SPACE PLAN OPTIONS

5.1 The Consultant will review the outcomes of Task 1 with the PMT and confirm the concepts and ideas for further exploration in this task.

5.2 Prepare up to three (3) building space planning options for City offices based on needs and anticipated growth for review and confirmation by the PMT. Options will present alternative balances of shared work areas vs private offices, conference and meet-up/collaborative spaces, and present different concepts for addressing project phasing and parking orientations. Each option will summarize the proposed facility location and space allocation for each department/division, including summary tables and bubble diagrams as appropriate to communicate key features and distinctions between options.

5.3 Review evaluation criteria with the PMT.

5.4 Meetings:

5.4.1 Two (2) PMT Meetings

5.5 Deliverables: Meeting agendas, exhibits, and summary minutes of each meeting; Space plan options; Evaluation criteria.

6. TASK 4: CONCEPTUAL DESIGN RECOMMENDATION

6.1 The Consultant will:

6.1.1 Review the feedback and outcomes to date with the PMT and confirm the City's preferred space plan option.

6.1.2 Refine the recommended strategy to reflect City input.

6.1.3 Prepare a conceptual level furniture plan for the City's' use to procure office furniture design services.

6.1.4 Prepare a conceptual level cost plan based on the conceptual level furniture plan.

6.1.5 Summary Report and Final Presentation. The Consultant will:

(a) Prepare a draft report summarizing the project process and recommendations for PMT review.

6.1.6 Incorporate the PMT's comments and prepare a final summary report.

6.2 Meetings: Two (2) PMT Meetings

6.3 Deliverables: Meeting Agendas, exhibits, and Summary Minutes of each meeting; Preferred building and parking planning strategy; Conceptual level cost plan; Draft summary report document in digital format; Final summary report document in digital format.

6.4

7. OPTIONAL SERVICES

7.1 The following services are not included in the Consultant's Scope of Basic Services and shall be provided if requested by the City. The Consultant shall be compensated for Additional Services in addition to compensation for Basic Services and Reimbursable Expenses.

7.1.1 Furniture Selection, Procurement & Installation

7.1.2 Preparation of as-built drawings (for facilities without available or complete to-scale documentation)

7.1.3 Space needs assessment for potential non-City partners, tenants, etc.

7.1.4 Technical/engineering building assessments, such as facilities condition assessments (FCA), structural analysis, hazardous materials, energy studies, etc.

7.1.5 Sustainability strategy / planning

7.1.6 Organizational consulting services

7.1.7 Real estate consulting

7.1.8 Architectural/engineering design and construction administration services

7.1.9 Any other services not listed in Basic Services above

8. PROJECT SCHEDULE

8.1 The Consultant shall perform the services described in Task 1-4 so as to complete each milestone within the time duration specified. The time to complete each task may be increased or decreased by mutual written agreement of the Consultant and the City. The Consultant shall provide a detailed schedule of work consistent with the schedule below within 14 days of receipt of the Notice to Proceed.

Task No.	TASK	DATE OR TASK DURATION
	NOTICE TO PROCEED	
1	Council Chamber Improvements	
	1A: Conceptual Design	8 Weeks from NTP
	1B: Construction Documents	10 Weeks from Task 1A
2	Planning and Needs Assessments	
	2A: Project Initiation	2 Weeks from NTP
	2B: Facilities Analysis	8 Weeks from Task 2A
	2C: Needs Assessment	8 Weeks from Task 2A
3	Space Plan Options	8 Weeks from Task 2
4	Conceptual Design Recommendation	6 Weeks from Task 3

9. FEE SCHEDULE.

Designer will invoice City on a monthly cycle based on the following fee schedule. Designer will include with progress payments a detailed progress report that indicates the amount of budget spent on each task and the total amount spent against the Total Compensation. Designer will inform City regarding any out-of-scope work being performed by Designer for which Designer intends to seek compensation from City.

For the Basic Services described in Exhibit A (Task 1 through Task 4), the City of Milpitas shall pay the Consultant a total fee in the amount not to exceed Two Hundred Thirty Thousand and One Hundred and Ted Dollars ($230,110).

For the Basic Services described in Exhibit A, (Task 1 through Task 4), the Consultant shall invoice for these services monthly for the percent complete of each task:

Task 1:	Council Chamber Improvements		$30,610.00
	Task 1A: Conceptual Design	$,10,760	
	Task 1B: Construction Documents	$19,850	
Task 2:	Planning and Needs Assessments		$47,750.00
	Task 2A: Project Initiation	$4,530	
	Task 2B: Facilities Analysis	$12,000	
	Task 2C: Needs Assessment	$31,220	
Task 3:	Space Plan Options		$31,220.00
Task 4:	Conceptual Design Recommendation		$35,890.00
Total Fixed Fee Services			$145,470.00
Reimbursable Allowance			$4,530.00
Agreement Not-To-Exceed Amount:			**$150,000.00**

Adjustments to Scope of Work: Minor adjustments in the scope of work and fee in each task and between tasks may be made if approved by both the City and the consultant. Such authorization must be in writing by the Consultant and City. In no case can the total fee of this Agreement be increased without a Contract Amendment.

EXHIBIT "B"

FEE AND PHASING/FUNDING SCHEDULES

10. FEE SCHEDULE.

Designer will invoice City on a monthly cycle based on the following fee schedule. Designer will include with progress payments a detailed progress report that indicates the amount of budget spent on each task and the total amount spent against the Total Compensation. Designer will inform City regarding any out-of-scope work being performed by Designer for which Designer intends to seek compensation from City.

For the Basic Services described in Exhibit A (Task 1 through Task 4), the City of Milpitas shall pay the Consultant a total fee in the amount not to exceed Two Hundred Thirty Thousand and One Hundred and Ted Dollars ($230,110).

For the Basic Services described in Exhibit A, (Task 1 through Task 4), the Consultant shall invoice for these services monthly for the percent complete of each task:

Task 1:	Council Chamber Improvements		$30,610.00
	Task 1A: Conceptual Design	$,10,760	
	Task 1B: Construction Documents	$19,850	
Task 2:	Planning and Needs Assessments		$47,750.00
	Task 2A: Project Initiation	$4,530	
	Task 2B: Facilities Analysis	$12,000	
	Task 2C: Needs Assessment	$31,220	
Task 3:	Space Plan Options		$31,220.00
Task 4:	Conceptual Design Recommendation		$35,890.00
Total Fixed Fee Services			$145,470.00
Reimbursable Allowance			$4,530.00
Agreement Not-To-Exceed Amount:			**$150,000.00**

Adjustments to Scope of Work: Minor adjustments in the scope of work and fee in each task and between tasks may be made if approved by both the City and the consultant. Such authorization must be in writing by the Consultant and City. In no case can the total fee of this Agreement be increased without a Contract Amendment.

EXHIBIT "C"

COMPENSATION RATES AND REIMBURSABLE EXPENSES

1. HOURLY COMPENSATION RATES.

Principal in Charge	$240.00 per hour
Principal	230.00 per hour
Associate	205.00 per hour
Project Manager	180.00 per hour
Architect III	175.00 per hour
Architect II	165.00 per hour
Architect I	155.00 per hour
Intern III	145.00 per hour
Intern II	135.00 per hour
Intern I	125.00 per hour
Project Support	105.00 - 240.00 per hour
Consulting Principal	230.00 per hour

1.1 The above-listed rates are adjusted annually. The next adjustment will be 1 January 2020.

2. REIMBURSABLE EXPENSES.

Reimbursable expenses are in addition to compensation for Basic Services in Exhibit A and include expenses incurred by the Consultant and subconsultants in the interest of the project, as identified in the following clauses.

Reimbursable expenses related to the project, whether for Consultant, subconsultant, or City use, are billable at 1.15 times direct cost or at the rates indicated below. Such costs include, but are not necessarily limited to:

- CAD plotting of check sets and presentation drawings larger than 11"x17".
- Outside service printing/copying of drawings and documents of any size.
- In-house black and white or color printing/copying of drawings larger than 11"x 17".
  - $2.00/sf for drawings larger than 11"x17"
- Color and grayscale printing and photocopying up to 11"x17" for client use. Meetings agendas, exhibits and task deliverables will be electronically distributed unless otherwise requested by the City.
  - 8.5"x11" grayscale: $.10/sheet
  - 8.5"x11" color: $.30/sheet

- 11"x17" grayscale: $.20/sheet
- 11"x17" color: $.60/sheet

- Software purchase and licensure on behalf of the client with prior client approval.
- Postage, delivery and messenger service.
- Photographic and digital imaging, including color and gray scale copies of any size.
- Outside telephone conferencing services.
- Overtime expenses with prior client approval.
- Architectural renderings, physical and digital scale models and animations.
- Travel expenses such as mileage, bridge tolls, and meals.
- Subconsultant costs that are not included in basic services.
- Presentation boards.
- Facilitation tools.
- Workshop accessories and facilitation materials.
- Videos, web services.

The following expenses are included in the hourly billing rates and are not billed separately:

- General in-house black and white printing/copying of 11"x 17" or smaller, except as noted above.
- Telephone and fax usage, unless stipulated otherwise by Agreement.

Compensation for Reimbursable Project Expenses shall not exceed Twenty Thousand Dollars ($20,000.00) without approval of the City.

The City and the Consultant agree that the rates for Additional Services and Reimbursable Expenses, including subconsultant and Reimbursable Expenses markup, shall be reviewed and adjusted annually for future project phases.

3. ADDITIONAL SERVICES.

Additional Services shall be computed at the actual hourly rates listed above.

4. ADDITIONAL CONSULTANTS.

If City requires Designer to hire consultants to perform any Additional Services, Designer shall be compensated therefore at the Designer's actual hourly rates plus 15%. City shall have the authority to review and approve the rates of any such consultants.

EXHIBIT "D"

INSURANCE REQUIREMENTS

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

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

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

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

Commercial General Liability (CGL):

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

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

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

Automobile Liability:

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

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

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

Professional Liability (Errors and Omissions):

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

X_ Insurance appropriates to the Designer's profession, with limit no less than **$1,000,000** per occurrence or claim, **$2,000,000** aggregate

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

___ Insurance appropriates to the Designer's profession, with limit no less than _____ per occurrence or claim, _____ aggregate

Workers' Compensation Insurance:

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

The Designer makes the following certification, required by section 1861 of the California Labor Code:

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

_____
Designer Signature

Builder's Risk (Course of Construction):

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

Surety Bonds:

___ Contractor shall provide the following Surety Bonds:
1. Bid Bond
2. Performance Bond
3. Payment Bond

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

Designer's Pollution Legal Liability:

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

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

Other Insurance Provisions:

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

Additional Insured Status:

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

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

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

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

Primary Coverage:

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

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

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

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

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

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

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

***Waiver of Subrogation*:**

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

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

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

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

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

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

Completed Operations

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

***Acceptability of Insurers*:**

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

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

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

2. Insurance must be maintained and evidence of insurance must be provided **for at least five (5) years after completion of contract of work.**

3. If coverage is canceled or non-renewed, and not replaced **with another claims-made policy form with a Retroactive Date prior to** the contract effective date, the Designer must purchase "extended reporting" coverage for a minimum of **five (5) years** after completion of work.

4. A copy of the claims reporting requirements must be submitted to the City for review.

5. If the services involve lead-based paint or asbestos identification/remediation, the Contractor's Pollution Liability Policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability Policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

***Subcontractors*:**

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

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

***Verification of Coverage*:**

Designer shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning

shall not waive the Designer's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

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

Failure to Comply:

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

Applicability of Coverage:

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

AMENDMENT NO. 1
TO DESIGN SERVICES AGREEMENT
WITH
GROUP 4 ARCHITECTURE RESEARCH + PLANNING, INC.
FOR
CITY HALL SPACE PLANNING SERVICES

This Amendment No. 1 is entered into this 6th day of October 2020, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "City"), and **Group 4 Architecture Research + Planning, Inc.,** a California Corporation (hereafter referred to as "Designer"). City and Designer are sometimes individually referred to as "Party" and collectively as "Parties" in this Amendment No 1.

RECITALS

WHEREAS, on January 2, 2019, the Parties entered into a Design Services Agreement for City Hall Space Planning Services (the "Agreement") in an amount not to exceed $150,000.00, and with a term period of January 2, 2019 to January 1, 2020; and

WHEREAS, the Parties now desire to amend the Agreement by retroactively extending the term period expiration date of January 1, 2020 to October 6, 2020, and to amend the Scope of Services by stopping all work.

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

1. The first sentence of Section 3.12 Term is hereby amended to read as follows:

   "The term of this Agreement shall be from **January 2, 2019** to **October 6, 2020,** unless earlier terminated as provided herein."

2. In accordance with item 3.12 "Termination, Suspension, and Abandonment" The City reserves the right to suspend or abandon, at any time and for any reason, all or any portion of the Project and the construction work thereon, or to terminate this Agreement at any time with or without cause. There fore the parties agree that all work scheduled under the "Designers Scope of Services" (Exhibit A) to the agreement shall cease immediately upon execution of this amendment.

3. The parties agree that Designer shall be paid for all work preformed through the date of execution of this amendment. The partiers agree that the agreement shall terminate on October 6, 2020 or upon final payment of any outstanding invoices.

4. Upon termination Designer shall provide to City all preliminary studies, sketches, working drawings, specifications, computations and all other Project Documents, as to which City would have been entitled at the completion of Designer's Services under this Agreement Upon payment of the amount required to be paid to Designer pursuant to the termination provisions of this Agreement

5. All other provisions of the Agreement not amended by this Amendment No. 1 shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 1 as of the date first written above.

CITY OF MILPITAS
Approved By:

_____
Steven G. McHarris, City Manager

_____
Date

Approved As To Form:

_____
Christopher J. Diaz, City Attorney

Approved:

_____
Walter C. Rossmann, Risk Manager/Director of Finance

Approved As To Content:

_____
Tony Ndah, Public Works Director

GROUP 4 ARCHITECTURE RESEARCH + PLANNING, INC.

_____
Signature

_____
Name

_____
Title

_____
Date

_____
DIR Registration Number (If Applicable)

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From*		To*	
	Account	Amount	Account	Amount
Check one: ☒ **Budget Appropriation** ☐ **Budget Transfer**	331-951340624800 330-3899	$40,000 $40,000	331-9513406153999 330-2931	$40,000 $40,000

Approve and Authorize the City Manager to execute Amendment No. 1 to the Agreement with Group 4 Architecture, Research & Design for Space Planning and Design of Office Spaces at City Hall, resulting in a decrease of the total not to exceed amount by $40,000 from $150,000 to $110,000 and approve a Budget Amendment returning the contractual savings to the General Government CIP Fund balance

Background:

Milpitas City Hall was completed in 2003 and the floorplan of City Hall has remained largely unchanged over the years. As the City has grown, staffing levels have changed as well to match. The City has increased recruitment of employees to fill vacant positions, in order to improve responsiveness and service levels to the public and reorganize departments to better respond to the current duties and demands. With these changes, the need for an evaluation of existing workspaces was identified in order to bring departments together and better utilize the work areas available at City Hall.

On December 4, 2018, the City Council approved and authorized the City Manager to execute an agreement with Group 4 Architecture, Research and Design (Group 4) for space planning and design of office spaces at City Hall. The contract scope of work included improving space efficiencies, improving workflow and modernizing workspace designs to meet the needs of current and future employees utilizing City Hall. The contract with Group 4 ended on January 1, 2020.

This contract amendment would be retroactive to January 20, 2020 and would extend the term of the contract to October 31, 2020, to allow for the closeout of tasks currently in progress, while suspending work on other tasks due to the recent COVID-19 pandemic and return the funds to the General Government CIP Fund balance.

Analysis:

Following Council approval of the agreement in December 2018, staff worked with Group 4 to complete conceptual designs, facility analysis, and needs assessment for City Hall. With the completion of the needs assessments for City Hall, Group 4 provided staff with space plan options, draft conceptual designs, and recommendations for City Hall, to account for the current and future workstation needs for City staff.

With the COVID-19 pandemic, staff are looking to reexamine workspaces at City Hall to not only account for current and future workstations for staff, but to also account for future floor plan layouts in a post COVID-19 world.

Amendment No. 1 would extend the contract term of the agreement to allow for the closeout of project tasks currently in progress and suspend work on project tasks that need to be reexamined due to the COVID-19 pandemic.

Policy Alternative:
Alternative: Do not execute Amendment No. 1 with Group 4.

Pros: No changes will need to be made to the existing agreement with Group 4.
Cons: Does not provide opportunity for City re-evaluate space needs for City Hall post COVID-19.

Reason not recommended: The COVID-19 pandemic has created the need for the transformation of offices to support social distancing, provide cleaner and more efficient workspaces, and protect employees from current and future pathogens.

Fiscal Impact:
This contract and budget amendment would result in the return $40,000 of contractual savings to the General Government CIP Fund balance for future use.

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

Recommendations:
Approve and Authorize the City Manager to execute Amendment No. 1 to the Agreement with Group 4 Architecture, Research & Design for Space Planning and Design of Office Spaces at City Hall, resulting in a decrease of the total not to exceed amount by $40,000 from $150,000 to $110,000 and approve a Budget Amendment returning the contractual savings to the General Government CIP Fund balance.

Attachments:
1. Original Agreement with Group 4 for City Hall Space Planning
2. Budget change form

☐ **Check if City Council Approval required.** **Meeting Date**: September 15, 2020

Requested by:	**Department Head:** Tony Ndah	**Date:** September 15, 2020
Reviewed by:	**Finance Director:** Walter C. Rossmann	**Date:** September 15, 2020

Date approved by City Council, if required: **Confirmed by:**

FI/24786/V **Form 30-222 (Rev. 1/92)**

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Authorize the City Manager to pay the Santa Clara County Cal ID Program FY 2020-21 invoice in an amount not to exceed $126,235**
Category:	Consent Calendar-Public Safety
Meeting Date:	10/6/2020
Staff Contact:	**Police Captain Frank Morales, 408-586-2521**
Recommendation:	Authorize the City Manager to pay the Santa Clara County Cal ID Program FY 2020-21 invoice in an amount not to exceed $126,235.

Background:
The Santa Clara County Sheriff's Office ("County") provides computerized latent fingerprint analysis to participating law enforcement agencies, including the Milpitas Police Department, through what is known as the Cal ID Program. The purpose of the Cal ID Program is to identify suspects through fingerprint identification, a key component in the investigation and conclusion of criminal cases.

In 2014, the City of Milpitas entered into an open-ended agreement with the County, unless and until written notice of termination, for use of the Cal ID program. The agreement was approved by Council on June 3, 2014. Invoices for the Cal ID program are paid on an annual basis in July for the current fiscal year.

Analysis:
In March of 2020, the County provided the City with an estimate of the anticipated cost for the Cal ID service for fiscal year 2020-21. Subsequently, the payment for the estimated cost for the service in the amount of $121,418.00 was approved by City Council on June 2, 2020 as part of the approval of the FY 2020-21 Adopted Budget.

However, the Police Department received an updated, final cost and invoice for the Cal ID program in July of 2020 based on the City's higher usage of the service, which exceeded the prior estimated cost. The final invoice for the service for fiscal year 2020-21 is $126,235.00 with a difference of $4,817.00.

Policy Alternative:

Alternative: Do not approve the payment of the Cal ID invoice in the amount of $126,235.

Pros: The Police Department operating budget would not incur the $126,235.00 expense.
Cons: The Police Department would not have access to the County's essential Cal ID latent fingerprint analysis service.

Reason not recommended: Not accessing the latent fingerprint analysis service would negatively impact the Police Department's investigation and completion of criminal cases.

Fiscal Impact:
There are sufficient funds in the Police Department's operating budget for the additional cost.

California Environmental Quality Act:
Not applicable

Recommendation:
Authorize the City Manager to pay the Santa Clara County Cal ID Program FY 2020-21 invoice in an amount not to exceed $126,235.

Attachments:
1. Santa Clara County Cal ID invoice for FY 2020-21
2. Santa Clara County Cal ID Program 2019 Annual Report
3. City Council meeting minutes from June 3, 2014
4. City Council meeting minutes from June 2, 2020

FY2020-2021 Allocation

Santa Clara County Cal ID Program

Proposed

FY 2021 Cal ID- Proposed Operating Budget: $3,578,029

	1		2		3	4		Col 2- Col 4 = 5	6
	10 Prints $1,279,143 County Contribution		**Latents** $2,298,886		Total Cost	Cal ID FY2020 Program Savings Latent %		**FY21 Costs**	FY20 Agy Total
Charges to Cities/Sheriff									
Campbell	~~$ 34,105~~	~~**2.67%**~~	$ 70,399	**3.06%**	$ 104,504	$ 32,154	3.06%	**$ 38,245**	$ 32,852
Gilroy	~~$ 52,376~~	~~**4.09%**~~	$ 139,157	**6.05%**	$ 191,533	$ 63,559	6.05%	**$ 75,598**	$ 73,936
Los Altos	~~$ 4,607~~	~~**0.36%**~~	$ 17,887	**0.78%**	$ 22,494	$ 8,170	0.78%	**$ 9,717**	$ 10,471
Los Gatos	~~$ 17,465~~	~~**1.37%**~~	$ 43,815	**1.91%**	$ 61,280	$ 20,012	1.91%	**$ 23,803**	$ 31,573
Milpitas	~~$ 40,137~~	~~**3.14%**~~	$ 232,367	**10.11%**	$ 272,504	$ 106,132	10.11%	**$ 126,235**	$ 122,694
Monte Sereno	~~$ 361~~	~~**0.03%**~~	$ -	**0.00%**	$ 361	$ -	0.00%	**$ -**	$ -
Morgan Hill	~~$ 29,214~~	~~**2.28%**~~	$ 30,687	**1.33%**	$ 59,901	$ 14,016	1.33%	**$ 16,671**	$ 22,541
Mountain View	~~$ 38,976~~	~~**3.05%**~~	$ 138,829	**6.04%**	$ 177,805	$ 63,409	6.04%	**$ 75,420**	$ 70,739
Palo Alto	~~$ 43,060~~	~~**3.37%**~~	$ 80,573	**3.50%**	$ 123,633	$ 36,801	3.50%	**$ 43,772**	$ 64,265
SJPD	~~$ 422,017~~	~~**32.99%**~~	$ -	**0.00%**	$ 422,017	$ -	0.00%	**$ -**	$ -
Santa Clara	~~$ 78,145~~	~~**6.11%**~~	$ 95,835	**4.17%**	$ 173,980	$ 43,772	4.17%	**$ 52,063**	$ 59,629
Sunnyvale	~~$ 49,196~~	~~**3.85%**~~	$ 472,118	**20.54%**	$ 521,314	$ 215,637	20.54%	**$ 256,481**	$ 258,257
Cupertino	~~$ 10,149~~	~~**0.79%**~~	$ -	**0.00%**	$ 10,149	$ -	0.00%	**$ -**	$ -
Los Altos Hills	~~$ 510~~	~~**0.04%**~~	$ -	**0.00%**	$ 510	$ -	0.00%	**$ -**	$ -
Saratoga	~~$ 3,523~~	~~**0.28%**~~	$ -	**0.00%**	$ 3,523	$ -	0.00%	**$ -**	$ -
Unincorp Sheriff's Office*	~~$ 172,852~~	~~**13.51%**~~	$ 838,554	**36.48%**	$ 1,011,406	$ 383,004	36.48%	**$ 455,550**	$ 544,091
Subtotal:	~~$ 996,693~~	~~77.92%~~	$ 2,160,221	93.97%	$ 3,156,914	$ 986,666	93.97%	**$ 1,173,555**	$ 1,291,048
Charges to County									
SC Co Other	~~$ 175,117~~	~~**13.69%**~~	$ 13,292	**0.58%**	$ 188,409	$ 6,071	0.58%	**$ 7,221**	
Stanford	~~$ 3,594~~	~~**0.28%**~~	$ 35,118	**1.53%**	$ 38,712	$ 16,040	1.53%	**$ 19,078**	
SC Co Task Forces	~~$ 3,936~~	~~**0.31%**~~	$ 16,410	**0.71%**	$ 20,346	$ 7,495	0.71%	**$ 8,915**	
Federal	~~$ 671~~	~~**0.05%**~~	$ 6,072	**0.26%**	$ 6,743	$ 2,773	0.26%	**$ 3,299**	
State	~~$ 70,725~~	~~**5.53%**~~	$ 27,897	**1.21%**	$ 98,622	$ 12,742	1.21%	**$ 15,155**	
SJSU	~~$ 13,484~~	~~**1.05%**~~	$ 29,538	**1.28%**	$ 43,022	$ 13,491	1.28%	**$ 16,047**	
Community Colleges	~~$ 3,116~~	~~**0.24%**~~	$ 10,338	**0.45%**	$ 13,454	$ 4,722	0.45%	**$ 5,616**	
Misc Agencies	~~$ 11,807~~	~~**0.92%**~~	$ -	**0.00%**	$ 11,807	$ -	0.00%	**$ -**	
Subtotal:	~~$ 282,450~~	~~22.08%~~	$ 138,665	6.03%	$ 421,115	$ 63,334	6.03%	**$ 75,331**	
Total:	~~$ 1,279,143~~	~~100%~~	$ 2,298,886	100%	$ 3,578,029	$ 1,050,000	100%	**$ 1,248,886**	

Charges to SB 720:

Expenditures	
Mugshot Maintenance	$ 230,000
Maint - Remote Livescans	$ 244,567
Mobile ID Maintenance	$ 49,750
Broadband Mobile ID	$ 15,000
	$ 539,317
Technology Plan	
AFIS Network Upgrades	$ 80,000
Mobile ID Program	$ 1,250,000
Disaster Recovery	$ 200,000
Justice System Interoperability	$ 300,000
Technology Refresh Cycle	$ 250,000
	$ 2,080,000

Total Operating Cost : $6,197,346

County of Santa Clara
Office of the Sheriff
Fiscal Services - Accounting Unit
55 West Younger Avenue
San Jose, CA 95110-1721
Telephone: (408) 808-4950

#10219

INVOICE
1800073581
Page 1 OF 1

BILL TO:

ACCOUNT: 710520
City of Milpitas
Police Department
Attn: Accounts Payable
1275 N. Milpitas Blvd
Milpitas CA 95035

REFERENCE

Invoice: 1800073581
Invoice Date: 07/14/2020
Reference: FY21 CAL-ID
Print Date: 07/15/2020

TERMS
Net30

INVOICE DESCRIPTION	AMOUNT
001 FISCAL YEAR 2020-2021 CAL-ID PROGRAM	
100-711-4237	
002 ALLOCATION OF LATENT COSTS AFTER ONE TIME REBATE	126,235.00
DEFERRED REVENUE	
TOTAL $	**126,235.00**

BILLING INQUIRIES CONTACT:
Sherry Yang (408)808-3607
sherry.yang@sbf.sccgov.org

X: [signature] 7/20

X: [signature] CDP 7/27/2020
Armando Corpuz, Chief of Police

100-711-4237
Acct. #

JUL 24 2020
Date

Please Detach & Return with Payment

ACCOUNT: 710520
City of Milpitas
1275 N. Milpitas Blvd
Milpitas, CA 95035

DUE DATE: 08/13/2020
INVOICE: 1800073581

AMOUNT DUE $126,235.00
AMOUNT ENCLOSED:

REMIT TO:
County of Santa Clara - Office of the Sheriff
Fiscal Services - Accounting Unit
55 West Younger Avenue
San Jose, CA 95110-1721

Exhibit 2

Approval of FY 2020-2021 Budgeted Contracts/Payments over $100,000

1. FY 2020-21 Operating Budget

Department Name	Contractor Name (if known) or Type of Contract	Description of Contract/Payment	Estimated Amount	Fund
City Clerk	County of Santa Clara Registrar of Voters	Services for the Municipal Election Nov. 3, 2020 ($125,000 for the election of the Mayor and two Councilmembers; $30,000 for one ballot measure pending Council decision)	$155,000	General Fund
Finance	PLAN JPA	Attorney Fees for Claims/Lawsuits	$300,000	General Fund Water Fund Sewer Fund
Finance	PLAN JPA	Liability/Cyber Insurance	$1,155,950	General Fund Water Fund Sewer Fund
Finance	PG&E	Utility - Electric	$2,600,000	General Fund Water Fund Sewer Fund
Finance	Integrys	Utility – Gas	$225,000	General Fund Water Fund Sewer Fund
Human Resources	Brown & Brown	Excess Insurance	$198,000	General Fund
Human Resources	Sedgwick	Third party Administrator for Worker's Compensation	$133,000	General Fund
Information Technology	CentralSquare Visicad	Maintenance for Public Safety Computer Aided Dispatch	$169,000	General Fund
Information Technology/ Finance	Cayenta Financial and Utility Maintenance	Maintenance for Cayenta Financial/Utility Billing System	$184,000/ $52,000	General Fund Water Fund Sewer Fund
Information Technology	Verizon Data Services	Data Services and Device Charges	$185,000	General Fund
Police	AXON	Police Body Worn Cameras / Tasers / Cloud storage	$124,000	General Fund
Police	Santa Clara County Sheriff's Office	Cal-ID for automated fingerprint checks	$121,418	General Fund
Police	County of Santa Clara	Crime Lab Major Case Evidence Exams	$237,975	General Fund

MEETING MINUTES
CITY OF MILPITAS

Minutes of:	**Regular Meeting of Milpitas City Council**
Date:	**Tuesday, June 3, 2014**
Time:	**6:00 PM Closed Session / 7:00 PM Open**
Location:	**Council Chambers, Milpitas City Hall, 455 East Calaveras Blvd., Milpitas**

CALL TO ORDER

Mayor Esteves called the meeting to order at 6:00 PM. The City Clerk noted the roll.

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

ABSENT: Councilmember Gomez was absent at roll call. He arrived at 6:14 PM for the Closed Session.

CLOSED SESSION

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

City Council then convened in Open Session at 7:01 PM.

ANNOUNCEMENT

None out of Closed Session.

PLEDGE

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

INVOCATION

Mayor Esteves provided a short prayer to start the meeting.

MEETING MINUTES

Motion: to approve the minutes of May 20, 2014 City Council meeting

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

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

SCHEDULE OF MEETINGS

Motion: to approve Council Calendars/Schedule of Meetings for June 2014

Mayor Esteves announced to the public that there were no City Council meetings in July, when the Council annually takes a break.

City Manager Tom Williams announced two meetings to add to the June calendar:
1) Milpitas Unified School District Board representatives and two Councilmembers would meet on Thursday, June 12 at 12:30 at City Hall Committee Room regarding the McCandless property.
2) Special meeting of the Board of Directors of the Santa Clara Valley Transportation Authority was scheduled for June 26 at 9:00 AM

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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

PRESENTATION

Mayor Esteves recognized the following:

- Youth Advisory Commission (YAC) Scholarship award to Ms. Ivy Pham, graduating senior at Milpitas High School, founder of the Science Club and Co-President of Math Club, who would attend Harvard University in the fall. YAC Vice Chair Cindy Wang announced the goals of the new YAC scholarship and the selection of Ms. Pham.

- Volunteers of the Volunteer Income Tax Assistance (VITA) program, who helped prepare income tax returns for those in need each spring. Lead volunteer Mr. Shaheed Mujtaba spoke on behalf of the Milpitas VITA volunteers. Linda Arbaugh from Milpitas Public Library and a United Way representative were issued certificates from the Mayor.

PUBLIC FORUM

Robert Marini, resident, referred to his prior comment on alleged kick-backs and a response he got. Then he quoted figures about Councilmembers' salary and hours worked, and the pension for a part-time job. He referred to a prior comment by the City Manager, and Mr. Marini said he got the information he'd quoted from City staff. No City Councilmember was being underpaid, he felt, and he never saw a City Councilmember who did not want to run again for another term.

Mayor Esteves responded to Mr. Marini, saying he was unkind to generalize about City Councilmembers. The Mayor noted how many hours all put in on the job as elected officials. He felt Marini made a disservice with his comments, and was disseminating untrue statements.

Rob Means, 1421 Yellowstone, talked about redevelopment agency dissolutions, the City of Brentwood case, and quoted a judge's decision in the legal case.

Mr. Dem Nitafan, President of Fil-Am Association of Milpitas, announced the upcoming 2014 Annual Filipino Fiesta on Saturday, June 7 from 2 – 5:30 PM. He thanked the City for the grants, helping with the event at the Community Center. This year was the 27th year of the fiesta in Milpitas and the 116th year of independence of the Philippines. He invited all elected officials, City staff and the community to come to the festivities.

ANNOUNCEMENTS

City Manager Tom Williams announced that a judge ruled recently that the City's sewer rates were fair and correct, after Mr. Marini challenged the City in court.

Councilmember Giordano congratulationed Spring Valley Firefighters who graduated at a ceremony last Saturday evening at City Hall.

Vice Mayor Polanski thanked staff and those who attended the Memorial Day ceremony honoring veterans in a very wonderful day. She congratulated the Chamber of Commerce for its BBQ Festival held last weekend. On Sunday, she went to the Children's Theatre Alliance 5K run/walk and thanked all sponsors for that fundraising event. Finally, she noted her total compensation was less than $11,000 last year, and that Council took a 10% pay cut several years ago and that had continued through today. She would be happy to share her compensation report with the public.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

City Attorney Ogaz asked City Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. No conflicts or contributions were reported.

APPROVAL OF AGENDA

Motion: to approve the agenda, as submitted

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

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

CONSENT CALENDAR

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

Councilmember Montano asked to remove Items No. 6 (Senior Advisory Commission workplan) and No. 16 (various Recreation vendors).

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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

* 4. Odor Report — Received the current update of the odor report.

* 5. Commission Re-appointments	Confirmed the following, as recommended by the Mayor: Emergency Preparedness Commission: re-appointed Mercedes Albana as a regular member to a term that will expire in June 2017. Library Advisory Commission: re-appointed Yu-Lan Chou, Ha Phan, Trinidad Aoalin and Elpidio Estioko as regular members to terms that will expire in June 2016. Parks, Recreation and Cultural Resources Commission: re-appointed Bhupinder (Bill) Singh as Alternate No. 1 to a term that will expire in June 2016.
* 8. Adopt Ordinance 196.11	Waived the second reading and adopted Ordinance No. 196.11 to regulate daytime residential noise levels.
* 9. Adopt Ordinance 271.1	Waived the second reading and adopted Ordinance No. 271.1 merging the Public Art Committee with the Arts Commission.
*10. Resolution	Adopted Resolution No. 8377 calling a General Municipal Election for Tuesday, November 4, 2014, requesting consolidation with the statewide gubernatorial election and requesting election services from the Santa Clara County Registrar of Voters.
*11. Resolution	Adopted Resolution No. 8378 approving Non-Exclusive Collection, Transportation, and Recycling Agreements with Peninsula Debris Box Service, LLC. and Lam Hauling, Inc. for three-year terms commencing on June 3, 2014 and August 2, 2014 respectively and authorize the City Manager or designee to extend the agreements for a maximum of two, three-year extensions.
*12. Resolution	Adopted Resolution No. 8379 authorizing the purchase of a Dell-AppAssure DL4000 Backup and Recovery Appliance from Dell Financial Services, LLC for an amount not-to-exceed $24,873.42 through a cooperative procurement contract.
*13. Resolution	Adopted Resolution No. 8380 awarding a contract to Frank Szeto, an individual doing business as New Orient Restaurant, for preparation and delivery of Asian style meals for the Senior Nutrition Program with an initial term from July 1, 2014, to June 30, 2015, in an amount not-to-exceed $46,099.20; and, authorizing the Purchasing Agent to exercise up to four annual options in the annual amount of $46,099.20 for a total contract amount of $230,496.00 over five years, subject to appropriation of funds and without any further City Council approval.
*14. Resolution	Adopted Resolution No. 8381 approving a new piggyback agreement with Ricoh Americas Corporation for a five year term from July 1, 2014 to June 30, 2019 in an annual amount not-to-exceed $60,000 and total five year amount not-to-exceed $300,000, for copier/multi-functional machines at City facilities.
*15. Cal-ID Random Access	Approved the Memorandum of Understanding with the County of Santa Clara to provide the Milpitas Police Department access to the California Identification RAN system.
*17. Agreement with Adonai Perazim Inc./Prints Charles	Approved an agreement with Adonai Perazim Inc., doing business as Prints Charles Reprographics, in the amount of $45,000, and for a term to June 30, 2017.
*18. Amendment No. 2 to Agreement with Vali Cooper	Approved Amendment No. 2 to the agreement with Vali Cooper & Associates extending the term to June 30, 2015, in the additional amount of $158,240 for the Silicon Valley Berryessa (BART) Extension Project No. 4265.
*19. Agreement with York	Authorized the City Manager to execute an amendment to the agreement with York Insurance Services Group, Inc. for workers' compensation Third Party Administrator service to extend it effective July 1, 2014, through June 30, 2015, in accordance with the terms and conditions stated in the amendment, in an amount not to exceed $129,000.

PUBLIC HEARINGS

1. Appeal by Integral Communities on Centre Point Mixed Use development project - continued to June 17

Motion: to continue the public hearing to June 17, 2014, at request of project applicant (developer)

Mayor Esteves asked if anyone in the audience had come to speak on this item, and no one present responded.

Motion/Second: Councilmember Gomez/Councilmember Montano

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

2. Levy Assessments for LLMD No. 95-1 McCarthy Ranch

City Engineer/Public Works Director Jeff Moneda introduced the Landscaping and Lighting Maintenance Assessment District No. 95-1 at McCarthy Ranch. Each year, a public hearing was required to review assessments charged to property owners for various public improvements. Staff displayed photos showing results of the maintenance, installation and repair work in that area. $276,676 was the total amount to be assessed in the coming fiscal year.

He clarified that the City does own the property that is maintained within the boundaries of the district (noted on the map displayed), as inquired by Councilmembers.

Councilmember Montano asked if the work that was performed included use of non-potable water. Mr. Moneda replied yes, some recycled water was used for the plants.

Mayor Esteves asked if the action had a zero fiscal impact, and Mr. Moneda replied yes.

Next, Mayor Esteves opened the public hearing for comment.

Voltaire Montemayor, Milpitas resident, cared about drainage during rainy time, and be sure not to impact flooding in this area.

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

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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

(2) Motion: to adopt Resolution No. 8375 approving the annual Engineer's Report, confirm diagram and assessment, and order levy of assessments for FY 2014-15 for Landscaping and Lighting Maintenance Assessment District No. 95-1, McCarthy Ranch

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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

3. Levy Assessments for LLMD No. 98-1 Sinclair Horizon

City Engineer/Public Works Director Jeff Moneda introduced the Landscaping and Lighting Maintenance Assessment District No. 98-1 at Sinclair Horizon subdivision. Each year, a public hearing was required to review assessments charged to property owners for various public improvements. Staff displayed photos showing some of the landscape and maintenance in that neighborhood. $36,591 was the total amount to be assessed in the coming fiscal year.

Contractor TerraCare provided the maintenance service at this site (Sinclair Horizon).

Councilmember Gomez departed the dais for a few minutes, and returned following the vote on this item.

Mayor Esteves opened the public hearing for comments, and heard none.

(1) Motion: to close the public hearing

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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

(2) Motion: to adopt Resolution No. 8376 approving the annual Engineer's Report, confirm diagram and assessment, and order levy of assessments for FY 2014-15 for Landscaping and Lighting Maintenance Assessment District No. 98-1, Sinclair Horizon

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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

REPORT OF COMMISSION

6. Senior Advisory Commission Workplan

Councilmember Montano asked questions about the Sunshine Program, one of those on the workplan by seniors for the Commission in the coming year. Recreation Services Supervisor Stephanie Douglas provided response and information to the City Council, on Sunshine and other programs.

Motion: to approve the 2014-15 Senior Advisory Commission Work Plan

Motion/Second: Councilmember Montano/Vice Mayor Polanski

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

ORDINANCES

Two ordinances were adopted on the consent calendar.

7. Ordinance No. 164.3 Related to Schedule of Fees and Charges

Finance Director Emma Karlen expressed the need for this ordinance to amend municipal code for the schedule of fees and charges. This was following the report at the last meeting and the adopted resolution for recommended changes to established fees. Adoption of the ordinance at the next Council meeting would incorporate those changes into the code.

City Attorney Mike Ogaz read aloud the title of Ordinance No. 164.3 "An Ordinance of the City Council of the City of Milpitas Amending Section 3-4.00 of Chapter 3 of Title IV of the Milpitas Municipal Code Relating to Fees and Service Charges."

(1) Motion: to waive the first reading beyond the title of Ordinance No. 164.3

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

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

(2) Motion: to introduce Ordinance No. 164.3 amending Milpitas Municipal Code relating to the Schedule of Fees and Service Charges

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

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

RESOLUTIONS

Five Resolutions were adopted on the consent calendar.

AGREEMENTS

Four agreements and amendments were approved on the consent calendar.

16. Agreements with Vendors for Recreation Services

Councilmember Montano asked about one of the vendors that provided classes, and Recreation staff Dale Flunoy explained those whose contracts were greater than $20,000 were on the list for Council approval at this meeting.

Motion: to approve nine separate agreements between the City of Milpitas Recreation Services and the following vendors for annual classes and camps not to exceed their appropriate dollar amounts for Fiscal Year 2014-15:

1.) Communication Academy – not to exceed $22,000
2.) Mad Science of Bay Area – not to exceed $22,500
3.) Barry Poole (tennis instructor)– not to exceed $40,000
4.) Irene Saxe and Music Together – not to exceed $24,000
5.) Noteworthy Music – not to exceed $35,000
6.) South Bay Scholars Basketball Camps – not to exceed $22,000
7.) Jensen Performing Arts – not to exceed $20,000
8.) Tatsiana Lahunovich (fitness) – not to exceed $20,000
9.) Center Stage Performing Arts – not to exceed $30,000

Motion/Second: Councilmember Montano/Vice Mayor Polanski

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

ADJOURNMENT

Mayor/Chair Esteves adjourned the City Council meeting at 8:01 PM.

The foregoing minutes were approved by the Milpitas City Council on June 17, 2014.

_____

Mary Lavelle
Milpitas City Clerk

MEETING MINUTES
CITY OF MILPITAS

Minutes of: **Joint Meeting of the Milpitas City Council and Milpitas Housing Authority**
Date: **Tuesday, June 2, 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 joint meeting to order at 6:07 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 and Phan

ABSENT: Councilmember Montano was absent at roll call, and arrived in the Closed Session.

CLOSED SESSION

City Council convened into Closed Session (online webinar conference) to discuss two items listed on the agenda, one labor negotiation item and a real estate matter.

At 8:15 PM, the Council exited Closed Session to begin the open session of the meeting.

ANNOUNCEMENT – from Closed Session

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

PLEDGE

Mayor Tran lead all in the pledge of allegiance.

INVOCATION

Councilmember Phan requested a moment of silence.

PRESENTATION

Mayor Tran proclaimed June 1 – 7, 2020 as *Milpitas High School Senior Recognition Week,* especially for the graduating classes of 2020 from Milpitas High School, Calaveras Hills, and the Milpitas Adult Education program.

PUBLIC FORUM

City Clerk read aloud comments from two Milpitas residents: Victor, and Voltaire Montemayor.

ANNOUNCEMENTS

City Manager Steve McHarris noted the new Santa Clara County Public Health Department order, which would be effective on Friday, June 5, and urged residents to view the latest information on the City's website on Covid-19 topics. The Economic Development office recently sent out a message to Milpitas businesses, and outdoor dining guidance would be available to restaurants soon.

Councilmember Montano requested to add future agenda items: 1) consider having consulate satellite offices at City Hall for nations including Mexico and the Philippines when Covid-19 was over (consensus reached); 2) forming a Historical Commission (4 were in favor), 3) request the City Council Code of Conduct to be read out aloud before each City Council meeting (3 were in favor); 4) request a celebration on September 16 to celebrate Mexican Independence Day (all were in favor).

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

City Attorney Chris 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 June 2 agenda, moving items no. 16 (Small Business Assistance) and no. 15 (agenda items list) to be heard following the Public Hearings

Motion/Second: Councilmember Montano/Vice Mayor Nuñez

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

CONSENT CALENDAR

Motion: to approve the consent calendar, including items no. C1 - C6, and C8 – C9

Vice Mayor Nuñez asked to remove item no. C7 (e-billing agreement) from consent.

Motion/Second: Vice Mayor Nuñez Councilmember Montano

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

C1. Council Calendar

Received the calendar of upcoming meetings for the month of June 2020.

C2. Meeting Minutes

Approved City Council meeting minutes of May 12, 15 and 19, 2020.

C3. Ordinance No. 305

Waived the second reading and adopted Ordinance No. 305, establishing fees for ambulance and emergency medical services.

C4. Resolution – camera purchase for Public Works

Adopted Resolution No. 8974 authorizing the purchase of a RapidView IBAK Panoramo 150 4K 360-Degree Camera System for the Public Works Department Sanitary Sewer System from Jack Doheny Companies through a Sourcewell cooperative contract in the amount of $147,777.04.

C5. Resolution – police equipment purchase

Adopted Resolution No. 8975 approving the purchase from Axon Enterprise, Inc. of 10 Body Worn Cameras, Conducted Electrical Weapons, Accessories and a Supplemental Subscription to Evidence.com cloud-based storage, for a total two-year cost of $53,965.45, approving standardization of Axon Enterprise, Inc. equipment as the standard brand for the City of Milpitas, and authorizing the City Manager to execute Amendment No. 2 to the Agreement with Axon Enterprise, Inc.

C6. EMD Agreement

Authorized the City Manager to execute a five-year agreement between the County of Santa Clara and City of Milpitas for Emergency Medical Dispatch (EMD) services in an amount not to exceed $328,736.37, subject to annual appropriations.

7. Agreement with Invoice Cloud

Item was removed from consent calendar early in the meeting and was heard at 12:53 AM on June 3.

Motion: to authorize the City Manager to execute an Agreement with Invoice Cloud, Inc. for e-bill presentment and e-payment of utility and miscellaneous invoices for a five-year period not to exceed $207,109.59, subject to annual appropriation of funds

Motion/Second: Vice Mayor Nuñez/Councilmember Phan

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

C8.Accounts Receivable Write-offs in FY 2019-20	Approved Accounts Receivable write-offs for the Fiscal Year ending June 30, 2020.
C9. Waive Preclusion in Agreement with C. Valdez	Approved and authorized the City Manager to waive the preclusion against seeking re-employment with the City contained in the settlement agreement with former Human Resources Director Carmen Valdez.

PUBLIC HEARINGS

10. FY 2020-21 Budget

Finance Director Walter Rossmann presented details of the proposed Fiscal Year 2020-21 City of Milpitas Budget and 2020-25 Capital Improvement Program (CIP). He reviewed anticipated revenues and expenditures for the next year. The overall budget totaled $220 million, with a General Fund of $117 million.

City Engineer Steve Erickson identified items added into the next year's Capital Improvement Program (CIP), as directed by the City Council following the CIP study session. $396.5 million over five years was the cost of the CIP, with 32 funded projects in FY 2020-21 totaling $39.7 million.

Mr. Rossman discussed reserves, budget strategy savings measures, and future reductions in the budget if necessary, considering whether or not revenue continued to decline drastically, following the coronavirus pandemic.

Mayor Tran opened the public hearing.

City Clerk read comments from three Milpitas residents: Thomas Valore, Voltaire Montemayor, and Urvish Mehta.

(1) Motion: to close the public hearing, following three comments

Motion/Second: Vice Mayor Nuñez/Councilmember Montano

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

Councilmember Dominguez noted for the record that she lived on Abbott Avenue, the same street on which a new CIP project was proposed. City Attorney Diaz advised she could vote on all budget and CIP Resolutions.

Mayor and Councilmembers commented, and staff answered various questions on the new budget.

(2) Motion: to adopt seven Resolutions, related to the Fiscal Year 2020-21 City Budget and Capital Improvement Program (CIP), listed below:

a) Joint Resolution No. 8976 / HA30 approving the Fiscal Year 2020-21 Operating Budget and the 2020-2025 Capital Improvement Program for the City of Milpitas and the Milpitas Housing Authority, approving the appropriations limit, and authorizing various financial actions by the City Manager, including approval of contracts and payments of more than $100,000
b) Resolution No. 8977 amending the Classification Plan to adjust the number of positions on the Authorized Positions List, and amend specific budgeted, allocated positions
c) Resolution No. 8978 amending the Classification Plan to adjust the hourly rate and ranges for classifications due to the minimum wage increase per Ordinance No. 292 (minimum wage ordinance)

d) Resolution No. 8979 amending the list of fringe benefits and eligibility for such benefits for Limited Term Employees
e) Resolution No. 8980 amending the Classification Plan to authorize fringe benefits for Unrepresented Management Employees
f) Resolution No. 8981 amending the Classification Plan to adjust the salary schedules for all International Association of Fire Fighters, Mid-Management and Confidential group, Professional and Technical group, miscellaneous unrepresented and Fire unrepresented classifications consistent with previous City Council action
g) Resolution No. 8982 amending the Master Fee Schedule for FY 2020-21 for revised user and regulatory fees for various city services

Motion/Second: Vice Mayor Nuñez/Councilmember Phan

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

11. Ordinance No. 38.840

Senior Planner Rozalynne Thompson defined recent state legislation and the need to update regulation of Accessory Dwelling Units (ADU) in the City of Milpitas. This would occur by Council adoption of zoning code amendments in the proposed ordinance. Ms. Thompson listed key provisions of the state ADU law, and locally specific provisions to be included.

Mayor Tran opened the public hearing.

City Clerk read aloud one comment from resident Voltaire Montemayor.

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

Motion/Second: Councilmember Montano/Councilmember Dominguez

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

City Attorney Chris Diaz read aloud the title of Ordinance No. 38.840, "An Ordinance of the City Council of the City of Milpitas Amending Sections of Chapter 10 of Title XI of the Milpitas Municipal Code Relating to Accessory Dwelling Units."

Motion: to waive the first reading beyond the title and introduce Ordinance No. 38.840

Motion/Second: Vice Mayor Nuñez/Councilmember Phan

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

COMMUNITY DEVELOPMENT

12. Development Process

Building Safety and Housing Director Sharon Goei presented a report and visual timeline on the process and procedures for major development projects in the City.

Planning Director Ned Thomas explained the development project application process through his department, including the new Zoning Administrator process.

Ms. Goei reviewed the Building Permit application process, meeting with all applicants prior to building permit submittal, response, approval and issuance.

Mayor Tran and Councilmembers thanked staff for this valuable, detailed information.

13. Housing Authority: loan term extension

Vice Mayor Nuñez had removed this topic from consent on June 2, and since that time, had received a response to his questions.

Motion: to approve and authorize the Executive Director to execute a term extension to the predevelopment loan agreement entered into by Resources for Community Development and the City of Milpitas Housing Authority for residential development at 355 Sango Court

Motion/Second: Vice Mayor Nuñez/Councilmember Dominguez

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

14. Amendment to De Novo Planning Group agreement

Vice Mayor Nuñez had removed this topic from consent on June 2, and since that time, had received a response to his questions.

Motion: to approve and authorize the City Manager to execute Amendment No. 1 to the agreement with De Novo Planning Group for the General Plan update to extend the term of service date from February 28, 2019 to December 31, 2021

Motion/Second: Vice Mayor Nuñez/Councilmember Montano

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

REPORTS

15. Agenda Items Requested by City Councilmembers

There was discussion of agenda items requested by City Councilmembers on the list presented in the agenda packet. Seven topics were unassigned and Councilmembers provided direction to staff, including the idea of prioritizing items.

City Clerk read aloud one public comment from resident, Ed Nichols.

Agreement was reached to proceed with items no. 4, 5, 6 and 7. Items no. 1 and 2 were withdrawn, and item no. 3 was already underway. Councilmembers asked staff to add to the top of the list items requested earlier by Councilmember Montano.

16. Small Business Loan Program

City Council Small Business Assistance Subcommittee Chair Montano discussed the work of the subcommittee, in order to arrive at ways to help small businesses through a new loan program.

Economic Development Director Alex Andrade explained the method for the small business loan program, and the potential for use of newly additional federal Community Development Block Grant funds. Subcommittee members agreed on recommending the Enterprise Foundation and Kiva as the administrators of the program.

Building Housing and Safety Director Sharon Goei reviewed CDBG as a funding source for this loan program, from the newer supplemental CDBG allocation through the CARES Act, with $397,911 granted to Milpitas. She listed the calendar of necessary steps, if Council wanted to proceed with this as the source for loans to businesses.

Mr. Dennis King from the Enterprise Foundation addressed the Council on the proposed program details.

City Clerk read aloud comments from two residents: Urvish Mehta and Voltaire Montemayor.

Mayor Tran asked Councilmembers on their point of view on a source of funding. Consensus was towards the use of CDBG funds, not the General Fund.

Motion: to approve a $200,000 Milpitas Small Business Loan Program and to authorize the City Manager (or his designee) to execute a contract with Enterprise Foundation and Kiva to act as fiscal agent, with source of funds to be confirmed a later date

Motion/Second: Vice Mayor Nuñez/Councilmember Dominguez

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

AGENDA PREVIEW

17. Preview Next Agenda

City Council received the list of anticipated agenda items for June 16, 2020.

ADJOURNMENT

Mayor Tran adjourned the joint meeting at 12:58 AM on Wednesday, June 3, 2020, in memory of George Floyd and others due to injustice in the U.S.

The foregoing minutes were approved by the Milpitas City Council on June 16, 2020.

_____

Mary Lavelle, City Clerk

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Approve a Budget Appropriation in the amount of $96,100 to the Equipment Fund Non departmental FY 2020-21 Operating Budget for the Replacement of Two Police Vehicles.**
Category:	Consent Calendar-Public Safety
Meeting Date:	10/6/2020
Staff Contact:	**Assistant Police Chief Jared Hernandez, 408-586-2406**
Recommendation:	Approve a budget appropriation in the amount of $96,100 to the Equipment Fund Non departmental FY 2020-21 operating budget for the replacement of two Police vehicles.

Background:
The Milpitas Police Department currently manages a fleet of twenty-nine (29) marked police vehicles, assigned to various patrol staff throughout the department's 24-7 operation. The City of Milpitas has a contractual obligation under the Milpitas Police Officer Association's (MPOA) Memorandum of Understanding to replace marked patrol vehicles once they acquire 75,000-miles, or up to a maximum extension of 90,000-miles if a marked patrol vehicle is deemed safe and suitable for patrol purposes. It is imperative the number of vehicles in the police department's fleet remains furnished to support mileage requirements and staffing needs to maintain current service levels and response times.

In April and May of 2020, two (2) police vehicles were involved in separate traffic collisions within the course of duties. Both collisions resulted in total losses and subsequent insurance payouts for the actual cash value loss of the vehicles, less the City's insurance deductible of $5,000 for each incident. This recommended budget appropriation of the total insurance payout to the Equipment Fund Non departmental operating budget would be used to purchase two (2) replacement vehicles, thus maintaining the department's fleet of twenty-nine (29) marked police vehicles.

Analysis:
The total insurance payout for both vehicles is sufficient to cover the cost of two (2) replacement vehicles; the total insurance payout is $113,998.56 and the total cost for two (2) replacement vehicles is $96,097.71. However, due to staffing levels and mileage requirements, if this budget appropriation is not approved and the vehicles are not replaced, the current fleet of police vehicles will reach mileage limits faster and there is a risk of insufficient availability of vehicles when other vehicles are out for maintenance or repair. In order for the Police Department to maintain appropriate service levels and response times, replacement of these two (2) patrol vehicles is essential. Therefore, a budget appropriation to the Equipment Fund Non departmental FY 2020-21 operating budget in the amount of $96,100 for the two (2) totaled vehicles is recommended and would be used to purchase two (2) replacement vehicles. The difference between the insurance payout and the funds needed to purchase the replacement vehicles in the amount of $17,900 will fall to fund balance in the Equipment Fund for future use.

Policy Alternatives:

Alternative 1: Do not approve a budget appropriation in the amount of $96,100 to the Equipment Fund Non departmental fiscal year 2020-2021 operating budget.

Pros: The City would receive the insurance payout for the two vehicles and not incur the expense of purchasing two police vehicles.
Cons: The Police Department would not be able to replace the two (2) needed vehicles. If the vehicles are not replaced, the police department would be at risk of maintaining current service levels and meeting MOU obligations in respect to vehicle mileage limits.

Fiscal Impact:
Staff recommends approval of a budget appropriation to the Equipment Fund Non departmental FY 2020-21 operating budget in the amount of $96,100 for the purchase of two (2) replacement vehicles. The difference between the insurance payout of $113,998.56and the funds needed to purchase the replacement vehicles in the amount of $17,900 will fall to fund balance in the Equipment Fund for future use. Any additional cost associated with the purchase of two (2) replacement vehicles exceeding this amount can be absorbed by the Police Department's operating budget.

California Environmental Quality Act:
Not applicable.

Recommendation:
Approve a budget appropriation in the amount of $96,100 to the Equipment Fund Non departmental FY 2020-21 operating budget for the replacement of two Police vehicles.

Attachments:
1. Proof of Loss – April 28, 2020
2. Proof of Loss – May 26, 2020
3. Budget change form

sedgwick

Sworn Statement in Proof of Loss

$As per form AMOUNT OF POLICY AT TIME OF LOSS	2019/2020 POLICY NUMBER
07/01/2019 DATE ISSUED	N/A AGENCY AT
07/01/2020 DATE EXPIRES	N/A AGENT

To the ***PLAN JPA***

At time of loss, by the above indicated policy of insurance you insured City of Milpitas

against loss by all risk of physical damage to the property described under , according to the terms and conditions of the said policy of and all forms, endorsements, transfers and assignments attached thereto.

1. **Time and origin**: A vehicle (STATE KIND) loss occurred about the hour of 6 o'clock P M.

on the 26th day of May , 2020. The cause and origin of the said loss were: Collision

2. **Occupancy**: The building described, or containing the property described, was occupied at the time of loss as follows, and for no other purpose whatever: 2014 Ford Taurus Police Unit #PT-27, license plate 1442401, VIN 1FAHP2MT4EG163012

3. **Title and Interest**: At the time of the loss the interest of your insured in the property described therein was sole and unconditional ownership. No other person or persons had any interest therein or encumbrance thereon, except: NO EXCEPTIONS

4. **Changes**: Since the said policy was issued there has been no assignment thereof, or change of interest, use, occupancy, possession, location or exposure of the property described, except: NO EXCEPTIONS

5. **Total Insurance:** The total amount of insurance upon the property described by this policy was, at the time of the loss	$ As per form
6. **Full Replacement Cost** of said property at the time of the loss was	$N/A
7. **Full Cost of Repair or Replacement** is	$63,544.78
8. **Applicable Salvage** is	$ 1,875.00
9. **Actual Cash Value Loss** is (Line 7 minus Line 8)	$61,669.78
10. **Less Amount of Deductible** and/or participation by the insured	$ 5,000.00
11. **Actual Cash Value Claim** is (Line 9 minus Line 10)	$56,669.78

Any person who knowingly and with intent to injure, defraud, or deceive any insurance company files a statement of claim or an application containing false, incomplete or misleading information is guilty of a felony of the third degree.

State of California

County of

Insured: City of Milpitas Jane Corpus Asst. Finance Director

Notary Public:

Subscribed and sworn before me this day of , Notary Seal

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 Santa Clara)

On September 24, 2020 before me, Mary A. Lavelle, Notary Public
(insert name and title of the officer)

personally appeared Jane Corpus,
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.

MARY A. LAVELLE
Notary Public - California
Santa Clara County
Commission # 2206763
My Comm. Expires Aug 12, 2021

Signature Mary A Lavelle (Seal)

sedgwick

Sworn Statement in Proof of Loss

$As per form AMOUNT OF POLICY AT TIME OF LOSS	2019/2020 POLICY NUMBER
07/01/2019 DATE ISSUED	N/A AGENCY AT
07/01/2020 DATE EXPIRES	N/A AGENT

To the ***PLAN JPA***

At time of loss, by the above indicated policy of insurance you insured City of Milpitas

against loss by all risk of physical damage to the property described under , according to the terms and conditions of the said policy of and all forms, endorsements, transfers and assignments attached thereto.

1. **Time and origin**: A vehicle (STATE KIND) loss occurred about the hour of 11 o'clock A M.

on the 28th day of April , 2020. The cause and origin of the said loss were: Collision

2. **Occupancy**: The building described, or containing the property described, was occupied at the time of loss as follows, and for no other purpose whatever: 2015 Ford Explorer Police Unit #PT-11, license plate 1478501, VIN 1FM5K8AR7FGC51718

3. **Title and Interest**: At the time of the loss the interest of your insured in the property described therein was sole and unconditional ownership. No other person or persons had any interest therein or encumbrance thereon, except: NO EXCEPTIONS

4. **Changes**: Since the said policy was issued there has been no assignment thereof, or change of interest, use, occupancy, possession, location or exposure of the property described, except: NO EXCEPTIONS

5. **Total Insurance:** The total amount of insurance upon the property described by this policy was, at the time of the loss	**$ As per form**
6. **Full Replacement Cost** of said property at the time of the loss was.....	**$N/A**
7. **Full Cost of Repair or Replacement** is.....	**$63,544.78**
8. **Applicable Salvage** is.....	**$ 1,216.00**
9. **Actual Cash Value Loss** is (Line 7 minus Line 8).....	**$ 62,328.78**
10. **Less Amount of Deductible** and/or participation by the insured.....	**$ 5,000.00**
11. **Actual Cash Value Claim** is (Line 9 minus Line 10).....	**$57,328.78**

Any person who knowingly and with intent to injure, defraud, or deceive any insurance company files a statement of claim or an application containing false, incomplete or misleading information is guilty of a felony of the third degree.

State of California **Insured:** Jane Corpus Asst Finance Director

County of **Notary Public:**

Subscribed and sworn before me this day of , Notary Seal

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 Santa Clara)

On July 30, 2020 before me, Mary A. Lavelle, Notary Public
(insert name and title of the officer)

personally appeared Jane Corpus,
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.

MARY A. LAVELLE
Notary Public – California
Santa Clara County
Commission # 2206763
My Comm. Expires Aug 12, 2021

Signature Mary A Lavelle (Seal)

PLAN
JOINT POWERS AUTHORITY
POOLED LIABILITY ASSURANCE NETWORK

PROPERTY LOSS REPORT-VEHICLE DAMAGE

Use this form to report loss or damage to property owned or used by the City, including buildings, furniture, equipment, supplies, boilers and heavy machinery.

FROM: Milpitas

TO: abagclaims@yorkrsg.com
York Risk Services Group
Attn: PLAN JPA Claims
1390 Willow Pass Road; Ste 1030
Concord, CA 94520
Phone: (925) 349-3800

Date: 5/18/2020

Submitted by: Rosanne Yamashita

Phone: 408.586.3162

Date & Time of Incident: 4/28/2020

Driver's Name: Officer Derek Yamamura

Department: Police

Vehicle: PT11 2015 Ford Explorer 1478501
Number Year Make/Model License#

Loss Location: 1325 E. Calaveras Blvd

Accident Description: Office failed to see parking ballard and drove into it.

Vehicle Damage: front end damage

Other Vehicle: _____
Number Year Make/Model License#

Other Driver: Name: _____ Phone: _____

Address: _____

Other Vehicle Damage: _____

Witnesses/Passengers: _____

Police or FD Report: Report#: 20-119-047

Contact Person: Robert DeLong

Phone#: 408.586.2651 Location: DPW

Please attach any loss documentation including reports, estimates and/or photographs of the damage in your possession with this Loss Report.

MILPITAS POLICE DEPARTMENT
TELEPHONE (408) 586-2400

ON DUTY
EMERGENCY VEHICLE

TRAFFIC COLLISION REPORT

1275 N. MILPITAS BLVD
MILPITAS, CALIFORNIA 95035

SPECIAL CONDITIONS	NO INJURED	H&R FELONY	CITY	CLASS	CASE NUMBER
☐ COUNTER REPORT	0	☐	MILPITAS	44B00	20-119-047
☒ EMERGENCY VEHICLE	NO. KILLED	H&R MISD.	COUNTY	BEAT	DAY OF WEEK / TOW AWAY
☐ PRIVATE PROPERTY	0	☐	SANTA CLARA	4	Tuesday / Yes

LOCATION

COLLISION OCCURRED ON	MO. DAY YEAR	TIME (2400)	NCIC	OFFICER I.D.
1325(B) E Calaveras Blvd	4/28/2020	1102	4308	225

GPS COORDINATES: LATITUDE 37.437147 LONGITUDE 121.884180

STATE HWY REL: ☐ YES ☒ NO

PHOTOGRAPHS BY: ☐ NONE 225

☐ AT INTERSECTION WITH ☒ OR: FEET/MILES OF parking lot Milpitas Sports Complex

PARTY 1

DRIVER'S LICENSE NUMBER	STATE	CLASS	AIR BAG	SAFETY EQUIP	VEH. YEAR	MAKE/MODEL/COLOR	LICENSE NUMBER	STATE
C3315722	CA	C	M	G	2015	Ford Explorer Blk/Wht	1478501	CA

DRIVER ☒ — NAME (FIRST, MIDDLE, LAST): Derek Kaneto Yamamura — PT-11

PEDESTRIAN ☐ — STREET ADDRESS: 1275 N Milpitas Blvd — OWNER'S NAME: City of Milpitas ☐ SAME AS DRIVER

PARKED VEHICLE ☐ — CITY/STATE/ZIP: Milpitas CA 95035 — OWNER'S ADDRESS: 1265 N Milpitas Blvd, Milpitas CA 95035 ☐ SAME AS DRIVER

BICYCLIST ☐

SEX	HAIR	EYES	HEIGHT	WEIGHT	BIRTHDATE MO DAY YEAR	RACE
M	BLK	BRN	5-5	194	11/7/1966	J

DISPOSITION OF VEHICLE ON ORDERS OF: ☐ OFFICER ☒ DRIVER ☐ OTHER — Towed by Economy Towing

OTHER ☐ — HOME PHONE / BUSINESS PHONE: 408-586-2400

PRIOR MECHANICAL DEFECTS: ☐ NONE APPARENT ☐ REFER TO NARRATIVE

VEHICLE IDENTIFICATION NUMBER:

INSURANCE CARRIER: City of Milpitas — POLICY NUMBER: Self Insured

DIR OF TRAVEL: W — ON STREET OR HIGHWAY: Parking Lot — SPEED LIMIT:

VEHICLE TYPE: 48 — DESCRIBE VEHICLE DAMAGE: ☐ UNK. ☐ NONE ☐ MINOR ☒ MOD. ☐ MAJOR ☐ ROLL-OVER — SHADE IN DAMAGED AREAS

CA — DOT

PARTY 2

DRIVER'S LICENSE NUMBER	STATE	CLASS	AIR BAG	SAFETY EQUIP	VEH. YEAR	MAKE/MODEL/COLOR	LICENSE NUMBER	STATE

DRIVER ☐ — NAME (FIRST, MIDDLE, LAST):

PEDESTRIAN ☐ — STREET ADDRESS: — OWNER'S NAME: ☐ SAME AS DRIVER

PARKED VEHICLE ☐ — CITY/STATE/ZIP: — OWNER'S ADDRESS: ☐ SAME AS DRIVER

BICYCLIST ☐

SEX	HAIR	EYES	HEIGHT	WEIGHT	BIRTHDATE MO DAY YEAR	RACE

DISPOSITION OF VEHICLE ON ORDERS OF: ☐ OFFICER ☐ DRIVER ☐ OTHER

OTHER ☐ — HOME PHONE / BUSINESS PHONE:

PRIOR MECHANICAL DEFECTS: ☐ NONE APPARENT ☐ REFER TO NARRATIVE

VEHICLE IDENTIFICATION NUMBER:

INSURANCE CARRIER: — POLICY NUMBER:

DIR OF TRAVEL: — ON STREET OR HIGHWAY: — SPEED LIMIT:

VEHICLE TYPE: — DESCRIBE VEHICLE DAMAGE: ☐ UNK. ☐ NONE ☐ MINOR ☐ MOD. ☐ MAJOR ☐ ROLL-OVER — SHADE IN DAMAGED AREAS

CA — DOT

PARTY 3

DRIVER'S LICENSE NUMBER	STATE	CLASS	AIR BAG	SAFETY EQUIP	VEH. YEAR	MAKE/MODEL/COLOR	LICENSE NUMBER	STATE

DRIVER ☐ — NAME (FIRST, MIDDLE, LAST):

PEDESTRIAN ☐ — STREET ADDRESS: — OWNER'S NAME: ☐ SAME AS DRIVER

PARKED VEHICLE ☐ — CITY/STATE/ZIP: — OWNER'S ADDRESS: ☐ SAME AS DRIVER

BICYCLIST ☐

SEX	HAIR	EYES	HEIGHT	WEIGHT	BIRTHDATE MO DAY YEAR	RACE

DISPOSITION OF VEHICLE ON ORDERS OF: ☐ OFFICER ☐ DRIVER ☐ OTHER

OTHER ☐ — HOME PHONE / BUSINESS PHONE:

PRIOR MECHANICAL DEFECTS: ☐ NONE APPARENT ☐ REFER TO NARRATIVE

VEHICLE IDENTIFICATION NUMBER:

INSURANCE CARRIER: — POLICY NUMBER:

DIR OF TRAVEL: — ON STREET OR HIGHWAY: — SPEED LIMIT:

VEHICLE TYPE: — DESCRIBE VEHICLE DAMAGE: ☐ UNK. ☐ NONE ☐ MINOR ☐ MOD. ☐ MAJOR ☐ ROLL-OVER — SHADE IN DAMAGED AREAS

CA — DOT

PREPARER'S NAME	REVIEWER'S NAME	DATE REVIEWED
Chris Nicholas #225	#253	

FORM NO. S4380_S (REVISED 9/11)

DATE OF COLLISION (MO DAY YEAR)	TIME (2400)	C.C.S #	OFFICER ID	CASE NUMBER
4/28/2020	1102	4308	225	20-119-047

PROPERTY DAMAGE — OWNER'S NAME: ; OWNER'S ADDRESS: ; NOTIFIED ☐ YES ☐ NO

DESCRIPTION OF DAMAGE:

SEATING POSITIONS OCCUPANTS

1 2 3
4 5 6
7

1 – DRIVER
2 TO 6 - PASSENGERS
7 - STA. WGN. REAR
8 - RR. OCC. TRK OR VAN
9 - POSITION UNKNOWN
0 - OTHER

A - NONE IN VEHICLE
B - UNKNOWN
C - LAP BELT USED
D - LAP BELT NOT USED
E - SHOULDER HARNESS USED
F - SHOULDER HARNESS NOT USED
G - LAP/SHOULDER HARNESS USED
H - LAP/SHOULDER HARNESS NOT USED
J - PASSIVE RESTRAINT USED
K - PASSIVE RESTRAINT NOT USED

AIR BAG/SAFETY EQUIPMENT

L - AIR BAG DEPLOYED
M - AIRBAG NOT DEPLOYED
N - OTHER
P - NOT REQUIRED

CHILD RESTRAINT

Q - IN VEHICLE USED
R - IN VEHICLE NOT USED
S - IN VEHICLE USED UNKNOWN
U - NONE IN VEHICLE

M/C BICYCLE HELMET

DRIVER: V - NO, W - YES
PASSENGER: X - NO, Y - YES

EJECETED FROM VEHICLE

0 – NOT EJECTED
1 – FULLY EJECTED
2 - PARTIALLY EJECTED
3 – UNKNOWN

INATTENTION CODES

A - CELLPHONE HANDHELD
B - CELLPHONE HANDSFREE
C - ELECTRONIC EQUIPMENT
D - RADIO/CD
E - SMOKING
F - EATING
G - CHILDREN
H - ANIMALS
I - PERSONAL HYGIENE
J - READING
K - OTHER

ITEMS MARKED BELOW WHICH ARE FOLLOWED BY AN ASTERICK (*) SHOULD BE EXPLAINED IN THE NARRATIVE

PRIMARY COLLISION FACTOR LIST NUMBER (#) OF PARTY AT FAULT

- A VC SECTION VIOLATED CITED ☐ YES ☐ NO
- 1 B OTHER IMPROPER DRIVING *: Turning
- ☐ C OTHER THAN DRIVER*
- ☐ D UNKNOWN*

WEATHER (MARK 1 TO 2 ITEMS)

- ☒ A CLEAR
- ☐ B CLOUDY
- ☐ C RAINING
- ☐ D SNOWING
- ☐ E FOG / VISIBILITY FT.
- ☐ F OTHER*
- ☐ G WIND

LIGHTING

- ☒ A DAYLIGHT
- ☐ B DUSK/DAWN
- ☐ C DARK – STREET LIGHTS
- ☐ D DARK – NO STREET LIGHTS
- ☐ E DARK – STREET LIGHTS NOT FUNCTIONING*

ROADWAY SURFACE

- ☒ A DRY
- ☐ B WET
- ☐ C SNOWY - ICY
- ☐ D SLIPPERY (MUDDY,OILY,ETC)

ROADWAY CONDITIONS (MARK 1 TO 2 ITEMS)

- ☐ A HOLES, DEEP RUT*
- ☐ B LOOSE MATERIAL ON ROADWAY*
- ☐ C OBSTRUCTION ON ROADWAY*
- ☐ D CONSTRUCTION - REPAIR ZONE
- ☐ E REDUCED ROADWAY WIDTH
- ☐ F FLOODED
- ☐ G OTHER*
- ☒ H NO UNUSUAL CONDITIONS

TRAFFIC CONTROL DEVICES	1	2	3
☐ A CONTROLS FUNCTIONING	☐	☐	☐
☐ B CONTROLS NOT FUNCTIONING*	☐	☐	☐
☐ C CONTROLS OBSCURED	☐	☐	☐
☒ D NO CONTROLS PRESENT / FACTOR*	☒	☐	☐

TYPE OF COLLISION

- ☐ A HEAD ON
- ☐ B SIDESWIPE
- ☐ C REAR END
- ☐ D BROADSIDE
- ☒ E HIT OBJECT
- ☐ F OVERTURNED
- ☐ G VEHICLE / PEDESTRIAN
- ☐ H OTHER* :

MOTOR VEHICLE INVOLVED WITH

- ☐ A NON-COLLISION
- ☐ B PEDESTRAIN
- ☐ C OTHER MOTOR VEHICLE
- ☐ D MOTOR VEHICLE ON OTHER ROADWAY
- ☐ E PARKED MOTOR VEHICLE
- ☐ F TRAIN
- ☐ G BICYCLE
- ☐ H ANIMAL:
- ☒ I FIXED OBJECT: ballard
- ☐ J OTHER OBJECT:

PEDESTRIAN'S ACTIONS

- ☒ A NO PEDESTRIAN INVOLVED
- ☐ B CROSSING IN CROSSWALK – AT INTERSECTION
- ☐ C CROSSING IN CROSSWALK – NOT AT INTERSECTION
- ☐ D CROSSING – NOT IN CROSSWALK
- ☐ E IN ROAD – INCLUDES SHOULDER
- ☐ F NOT IN ROAD
- ☐ G APPROACHING / LEAVING SCHOOL BUS

SPECIAL INFORMATION	1	2	3
A HAZARDOUS MATERIAL	☐	☐	☐
B CELL PHONE HANDHELD IN USE	☐	☐	☐
C CELL PHONE HANDSFREE IN USE	☐	☐	☐
D CELL PHONE NOT IN USE	☐	☐	☐
E SCHOOL BUS RELATED	☒	☐	☐
F 75 FT MOTORTRUCK COMBO	☐	☐	☐
G 32 FT TRAILER COMBO	☐	☐	☐
H	☐	☐	☐
I	☐	☐	☐
J	☐	☐	☐
K	☐	☐	☐
L	☐	☐	☐
M	☐	☐	☐
N	☐	☐	☐
O	☐	☐	☐
	☐	☐	☐
	☐	☐	☐

OTHER ASSOCIATED FACTOR(S) (MARK 1 TO 2 ITEMS)

	1	2	3
A VC SECTION VIOLATION CITED ☐ YES ☐ NO	☐		
B VC SECTION VIOLATION CITED ☐ YES ☐ NO		☐	
C VC SECTION VIOLATION CITED ☐ YES ☐ NO			☐
D	☐	☐	☐
E VISION OBSCUEMENT:	☐	☐	☐
F INATTENTION:	☐	☐	☐
G STOP AND GO TRAFFIC	☐	☐	☐
H ENTERING / LEAVING RAMP	☐	☐	☐
I PREVIOUS COLLISION	☐	☐	☐
J UNFAMILIAR WITH ROAD	☐	☐	☐
K DEFECTIVE VEH. EQUIPMENT	☐	☐	☐
L UNINVOLVED VEHICLE	☐	☐	☐
M OTHER *	☐	☐	☐
N NONE APPARENT	☒	☐	☐
O RUNAWAY VEHICLE	☐	☐	☐

MOVEMENT PROCEEDING COLLISION
A STOPPED
B PROCEEDING STRAIGHT
C RAN OFF ROAD
D MAKING RIGHTTURN
E MAKING LEFT TURN
F MAKING U-TURN
G BACKING
H SLOWING / STOPPING
I PASSING OTHER VEHICLE
J CHANGING LANES
K PARKING MANEUVER
L ENTERING TRAFFIC
M OTHER UNSAFE TURNING
N XING INTO OPPOSING LANE
O PARKED
P MERGING
Q TRAVELING WRONG WAY
R OTHER

SOBRIETY – DRUG PHYSICAL (MARK 1 TO 2 ITEMS)

	1	2	3
A HAD NOT BEEN DRINKING	☒	☐	☐
B HBD – UNDER INFLUENCE	☐	☐	☐
C HBD – NOT UNDER INFLUENCE*	☐	☐	☐
D HBD – IMPAIRMENT UNKNOWN*	☐	☐	☐
E UNDER DRUG INFLUENCE*	☐	☐	☐
F IMPAIRMENT – PHYSICAL*	☐	☐	☐
G IMPAIRMENT NOT KNOWN	☐	☐	☐
H NOT APPICABLE	☐	☐	☐
I SLEEPY / FATIGUED	☐	☐	☐

PARTY # CITATION #

PARTY # CITATION #

See attached sketch ☒

INDICATE NORTH

SKETCH LEGEND ☐ SEE DIAGRAM

POINT OF IMPACT	BROADSIDE	☒	CONT. ATTACHED
VEHICLE (NOTPARKED)	APPROACH TURN	☐	CONT. RECORDED
PEDESTRIAN	OVERTAKING TURN	☐	SEE CHP180
TRAIN	OUT OF CONTROL		REFER:
PARKED VEHICLE	OVERTURNED	☒	TRAFFIC FOR INFO
FIXED OBJECT	VEHICLE BACKING	☐	TRAFFIC FOR F/U
HEAD-ON	MOTORCYCLE BICYCLE	☐	SIU FOR INFO
HEAD-ON SIDESWIPE	VICTIM (POR)	☐	SIU FOR F/U
REAR END	OVERTAKING SIDESWIPE	☐	DISTRICT ATTORNEY
		☒	OTHER: A229

#253

REPORT TYPE ☐ SUPPLEMENTAL Property Damage Collision – PD Vehicle	NARRATIVE MILPITAS POLICE DEPT. 1275 N. MILPITAS BLVD., MILPITAS, CA 95035 (408) 586-2400	CASE NO. 20-119-047
DATE OF ORIGINAL REPORT: 04/28/20	DATE AND TIME OF CONTINUATION: 04/28/20 1250 hr	
LOCATION: 1325 E Calaveras Blvd Parking Lot Sports Complex		

Notification:

On April 28, 2020, I was working full uniform and riding a fully marked police motorcycle. At 1105 hours, I was notified of a property damage collision involving a police vehicle in the parking lot of the Milpitas Sports Complex. I responded to the sports complex from the police station. All measurements and times are approximate.

Summary:

I arrived and met with Officer Yamamura, #197, who provided me with the following statement. Officer Yamamura said he was driving his assigned police vehicle, PT-11, 2015 Ford Explorer License Plate 1478501. Officer Yamamura was in the parking lot of the sports complex and was driving westbound preparing to drive towards the exit. Officer Yamamura said he started forward and made a left turn towards the exit. Officer Yamamura said he did not know what happened, but he hit a ballard near the north end of the parking row. Officer Yamamura was not injured in the collision. I asked Officer Yamamura if he was using a cell phone or his mobile computer terminal, and Officer Yamamura said that he was not.

I examined the damage to the ballard but could not determine if there was any new damage due to the extent of previous damage on the pole. I examined the damage to PT11 and saw crush damage to the center of the front of the vehicle. The push bar was bent back, and the hood was buckled. I noted the radiator was punctured and grill was damaged. I took photographs of the damage to the vehicle, and later downloaded them to the MPD photo database.

I examined the area of impact. I noted a scuffmark on the pavement about a foot long in front of the right front tire and another mark in front of the right rear tire. The scuffmark was post collision as a result of the vehicle coming to a stop. I noted the scuff was in a straight line and in line with the tires, as the vehicle was backed away from the pole. I did not see any scuffed indicating the vehicle yawed as a result of the collision. Based on these observations, I believe the collision occurred at a low speed.

Cause:

Based on the statement provided by Officer Yamamura, the damage to the vehicle, and other evidence, I determined that Officer Yamamura failed to see the parking ballard in the parking lot as he started his turning movement. It was this other improper driving that caused the collision.

Refer Traffic

OFFICER'S NAME	ID NO.	DATE/TIME	SHIFT/DAYS OFF	SUPERVISOR REVIEW	ID NO.	DATE	PG
Chris Nicholas	225	04/28/20	W2	#258			1

STATE OF CALIFORNIA
FACTUAL DIAGRAM
CHP 555 Page 4(Rev. 11-06) OPI 065

Page of

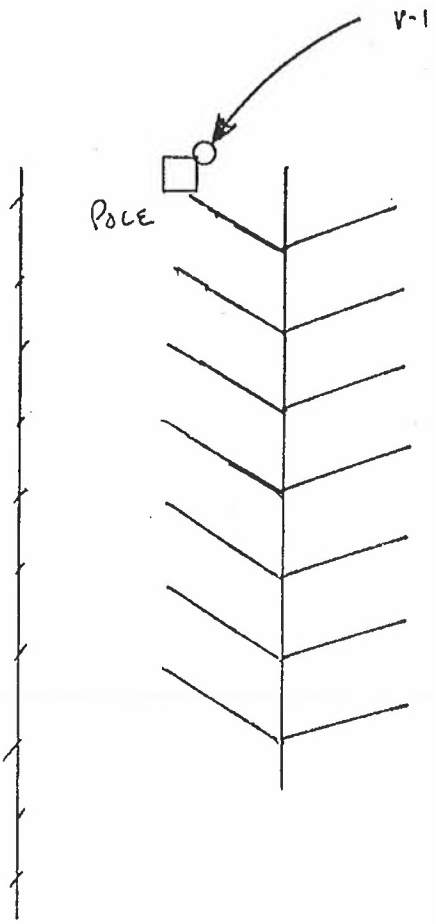
DATE OF COLLISION (MO. DAY YEAR)	TIME (2400)	NCIC #	OFFICER I.D.	NUMBER
4/28/20	1102	4308	225	20-119-047

ALL MEASUREMENTS ARE APPROXIMATE AND NOT TO SCALE UNLESS STATED (SCALE =)

INDICATE NORTH

PARKING LOT . 1325 E CALAVERAS BLVD.

SPORTS COMPLEX



PREPARED BY	I.D. NUMBER	MO. DAY YEAR	REVIEWER'S NAME	MO. DAY YEAR
CHRIS NICHOLS	225	4/28/20	#253	

POOL
SETINA
CA EXEMPT
1478501

11

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From*		To*	
	Account	Amount	Account	Amount
Check one: ☒ **Budget Appropriation** ☐ **Budget Transfer**	**500-3799**	**$ 113,998.56**	**500-9304851** **500-2909**	**$96,100** **17,900**

Approve a budget appropriation in the amount of $96,100 to the Equipment Fund Non departmental FY 2020-21 operating budget for the replacement of two Police vehicles.

Background:
The Milpitas Police Department currently manages a fleet of twenty-nine (29) marked police vehicles, assigned to various patrol staff throughout the department's 24-7 operation. The City of Milpitas has a contractual obligation under the Milpitas Police Officer Association's (MPOA) Memorandum of Understanding to replace marked patrol vehicles once they acquire 75,000-miles, or up to a maximum extension of 90,000-miles if a marked patrol vehicle is deemed safe and suitable for patrol purposes. It is imperative the number of vehicles in the police department's fleet remains furnished to support mileage requirements and staffing needs to maintain current service levels and response times.

In April and May of 2020, two (2) police vehicles were involved in separate traffic collisions within the course of duties. Both collisions resulted in total losses and subsequent insurance payouts for the actual cash value loss of the vehicles, less the City's insurance deductible of $5,000 for each incident. This recommended budget appropriation of the total insurance payout to the Equipment Fund Non departmental operating budget would be used to purchase two (2) replacement vehicles, thus maintaining the department's fleet of twenty-nine (29) marked police vehicles.

Analysis:
The total insurance payout for both vehicles is sufficient to cover the cost of two (2) replacement vehicles; the total insurance payout is $113,998.56 and the total cost for two (2) replacement vehicles is $96,097.71. However, due to staffing levels and mileage requirements, if this budget appropriation is not approved and the vehicles are not replaced, the current fleet of police vehicles will reach mileage limits faster and there is a risk of insufficient availability of vehicles when other vehicles are out for maintenance or repair. In order for the Police Department to maintain appropriate service levels and response times, replacement of these two (2) patrol vehicles is essential. Therefore, a budget appropriation to the Equipment Fund Non departmental FY 2020-21 operating budget in the amount of $96,100 for the two (2) totaled vehicles is recommended and would be used to purchase two (2) replacement vehicles. The difference between the insurance payout and the funds needed to purchase the replacement vehicles in the amount of $17,900 will fall to fund balance in the Equipment Fund for future use.

Policy Alternative:
Alternative 1: Do not approve a budget appropriation in the amount of $96,100 to the Equipment Fund Non departmental fiscal year 2020-2021 operating budget.
Pros: The City would receive the insurance payout for the two vehicles and not incur the expense of purchasing two police vehicles.

Cons: The Police Department would not be able to replace the two (2) needed vehicles. If the vehicles are not replaced, the police department would be at risk of maintaining current service levels and meeting MOU obligations in respect to vehicle mileage limits.

Fiscal Impact:
Staff recommends approval of a budget appropriation to the Equipment Fund Non departmental FY 2020-21 operating budget in the amount of $96,100 for the purchase of two (2) replacement vehicles. The difference between the insurance payout of $113,998.56and the funds needed to purchase the replacement vehicles in the amount of $17,900 will fall to fund balance in the Equipment Fund for future use. Any additional cost associated with the purchase of two (2) replacement vehicles exceeding this amount can be absorbed by the Police Department's operating budget.

California Environmental Quality Act:
Not applicable.

Recommendations:
Approve a budget appropriation in the amount of $96,100 to the Equipment Fund Non departmental FY 2020-21 operating budget for the replacement of two Police vehicles.

Attachments:
1. Proof of Loss – April 28, 2020
2. Proof of Loss – May 26, 2020
3. Budget change form

☐ **Check if City Council Approval required.** **Meeting Date**: October 06, 2020

Requested by:	**Department Head:** Armando Corpuz	**Date:** October 06, 2020
Reviewed by:	**Finance Director:** Walter C. Rossmann	**Date:** October 06, 2020

Date approved by City Council, if required: **Confirmed by:**

FI/24786/V **Form 30-222 (Rev. 1/92)**

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Receive Report on the Status of COVID19 Testing in the City of Milpitas; Direct the City Manager to develop a Memorandum of Understanding with the County of Santa Clara for COVID-19 testing activities retroactive to March 13, 2020 for FEMA reimbursement purposes, if needed; Authorize Additional $155,000 to Fund the City's Mobile Testing Unit and the County Fixed Testing Site through December 31, 2020; and Direct the City Manager to explore developing an agreement with the County to establish a City-operated vaccination site when a vaccine becomes available**
Category:	Public Safety
Meeting Date:	10/6/2020
Staff Contact:	Geoffrey Maloon, 408-586-2818
Recommendations:	1. Receive an update regarding the status of COVID-19 testing in Milpitas. 2. Authorize $155,000 to fund the City's mobile testing unit, the County mobile and pop-up testing sites and the fixed testing site at Milpitas Library through December 31, 2020. 3. Direct the City Manager to develop a Memorandum of Understanding with the County of Santa Clara for COVID-19 testing activities retroactive to March 13, 2020 for FEMA reimbursement purposes, if needed. 4. Direct the City Manager to explore developing an agreement with the County to establish a City-operated vaccination site when a vaccine becomes available.

Background:

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, the President of the United States declared a National Emergency concerning the Novel Coronavirus Disease (COVID-19) Outbreak. On Monday, March 16, 2020, the County of Santa Clara, and six of the most populous counties in the region, announced a shelter-in-place (SIP) order in light of the increased number of cases of COVID-19 that have been confirmed in Santa Clara County. The incident period related to the Novel Coronavirus Disease (COVID-19) Outbreak has currently no end date.

COVID-19 has severely impacted nations and communities across the globe. There is universal agreement among public health experts, scientists, physicians and emergency managers that widespread testing is one of the keys to lifting stay-at-home/shelter-in-place orders. Santa Clara County and the United States have been lagging in the availability of widespread, accessible testing, which is hampering our ability to lift these orders.

During the May 5 special City Council meeting, Council authorized the City Manager to enter into an agreement with a Milpitas based testing lab, IGeneX, Inc., to support a City mobile testing unit targeting vulnerable populations and employees of businesses based in Milpitas. On May 27, the mobile testing unit began testing Milpitas residents and visitors and continues to operate Monday-Friday from 9:00 AM-5:00 PM at various sites throughout the City.

Council was given an update on the mobile and County fixed testing sites at its special meetings on June 2. Council approved an additional $65,000 to support the City mobile testing unit and $25,000 to support the County fixed testing operation through August 7 utilizing the Unanticipated Expenditure Reserve. Council was

again provided an update on August 4 and approved additional funding in the amount of $175,000 for continued testing support through October 9 from the same reserve.

Staff has been working with the County hospital system, County Office of Emergency Services (OES), and a Milpitas-based medical testing lab named IGeneX to establish and increase testing capability in the City of Milpitas through both fixed and mobile testing options. The Milpitas based mobile testing unit is the only testing facility in the County that is easily accessible to City residents and employees and providing test results in 24 hours or less on a consistent basis.

As the pandemic unfolded and costs were incurred, staff remained in regular contact with the Federal Emergency Management Agency (FEMA) to ensure that the costs related to the pandemic including the costs for the mobile testing facilities are eligible for reimbursement by FEMA. During a call on May 29, 2020, the FEMA representative confirmed that mobile testing facilities are an eligible expense for reimbursement without specifying any conditions for reimbursements. During the months of August and September staff started to compile all necessary data and documentation for FEMA reimbursement including costs related to the testing facilities. As part of seeking input to establish the rental rate for the ambulance used as the mobile testing site, another FEMA representative inquired whether the city received a directive from the County health official to establish a mobile testing site.

Analysis:

While the science and recommendations vary, the generally accepted recommendations for testing range between one and twenty-one percent of the population weekly. With a population of approximately 80,000, five percent of the population equates to 4,000 weekly tests. With the County fixed testing site, combined with the City's mobile testing unit and the twice monthly County pop-up and mobile testing units fully operational, we expect testing approximately 1,600 people weekly.

Fixed Testing

On April 15, 2020, the County Hospital and Clinic System opened a small fixed testing site at the Milpitas Sports Center. From its April opening until May 22 the site operated daily, Monday – Friday from 8:00 am – 12:00 pm by appointment only and was averaging approximately 6 – 8 tests per day for Santa Clara Valley Health patients only. The fixed testing site has since relocated to the Milpitas Library parking garage and is testing Monday-Friday from 8 AM-4:30 PM. The site is conducting approximately 100-120 tests per day on an appointment only basis. The County testing site has relaxed their testing criteria to include asymptomatic persons. Additionally, the site is open to people outside the County Health system, uninsured individuals and is free of charge. Staff is recommending continuing City support through December 31 in the form of three part-time personnel to assist with intake and traffic control.

The City has supported this effort with equipment such as generators, extension cords, tables, chairs and fans. Additionally, the Recreation and Community Services department have supported with effort with part-time personnel and on-duty Fire department personnel are tasked with decontaminating the site every day when operations cease. As of October 1, the estimated cost of this effort is approximately $51,000. The additional cost to support the County fixed site through December 31 is estimated to be an additional $36,000, with total costs to support this site estimated to be $87,000. It is anticipated that approximately $62,250 of that cost will be reimbursed by FEMA pending development of a Memorandum of Understanding with the County as discussed below.

City Mobile Testing Site

The mobile testing unit has conducted 4,211 tests to date, or approximately 320 per week, with approximately 60-65% of all persons tested being Milpitas residents or working in the City. It is important to note that the mobile testing unit was taken out of operation on August 20 due to deployment of staff to combat wildfires. With the return of staff from deployment, testing is scheduled to resume on October 5.

As of October 2, the City mobile testing unit has cost approximately $198,000. This includes staff from various departments such as Fire, Recreation and Community Services, and City Manager's Office, and general support such as hotels for quarantines, supplies and food for testing staff (approximately $11,500).

These costs include staffing the mobile test unit as well as staff hours for administration that includes flyer creation and translation, setting site locations, notification of tested individuals, coordination with the County Emergency Operations Center Testing Unit, social media updates, appointment setting, website postings and outreach. Staff dedicated to this effort include the Fire Department EMS Battalion Chief, EMS Captain and one firefighter on light duty. Recreation and Community Services staff participating in this effort include the Director of Recreation and Community Services, the Community Engagement and Inclusion Administrator and four full-time staff members. Two additional part time staffers have been assigned to the mobile testing unit to assist with documentation and quality control. The costs for the administrative personnel are largely not reimbursed by FEMA because the staff time for these costs was budgeted prior to the declaration of the national emergency. The unanticipated non-reimbursed costs for administration to date total approximately $43,500 including salary and benefits for administrative personnel.

Recent efforts to reduce needed administrative staff time have been implemented and some administrative functions are one-time only and will not result in additional time needed (flyer creation and translation). Total additional cost anticipated to continue the City's mobile testing program through December 31 is $247,000. With the fire related shutdowns of the mobile testing unit approximately $133,000 of authorized funding has not been expended which is recommended to be used to offset the additional funding needed to continue the program through December 31. Therefore, total new funding needed to continue the mobile testing through December is $114,000.

Despite the anticipated costs and resources required, staff recommends continued support of the mobile testing effort. The reasons for this recommendation include extremely fast test results (24 hours or less), the ability to test essential City employees on short notice, the ability to reach vulnerable populations such as the uninsured, elderly and essential workers and the continued testing recommendations of the CDC and public health experts to facilitate reopening and prevention of community spread.

County Mobile and Pop-up Testing

The County set up both pop-up and mobile testing in the City in the month of August and on a rotating basis moving forward. The mobile site focuses on testing a target population such as essential workers or vulnerable groups and can test up to 200 people per day. The pop-up site is able to test up to 600 individuals per day by appointment only.

The City will need to provide up to three staff to assist with intake and traffic control for the mobile testing. Estimated costs for staff time through October 9 is approximately $4,500. An additional $4,500 will be needed to continue to support this program through December 31.

The County mobile and pop up testing sites would augment the existing testing in the City and increase our monthly testing significantly. The additional County testing sites would allow an increase of up to 1,600 additional test capacity in Milpitas on a monthly basis.

Memorandum of Understanding with the County of Santa Clara

As discussed above, FEMA requires that the City receive a directive from the County Health Official to operate testing sites within its boundaries. Staff was not made aware that a directive is necessary in order to receive reimbursement. The FEMA representative suggested that in lieu of a directive, which cannot be granted retroactively, the City enter into a memorandum of understanding (MOU) with the County to seek reimbursement for costs related to the mobile testing facilities established in our City.

On Thursday last week staff had a conference call with County and FEMA representatives. FEMA reiterated the requirement that the City is required to have legal authority such as a directive from the County Health Official for administering COVID-19 tests. Staff responded that under State law, the City's Health Official shall take measures as may be necessary to prevent the spread of the disease or occurrence or additional cases. Staff will provide the section of State law and documented interactions between the City and County regard

the operation and support for the testing sites to FEMA. If FEMA rejects the City's position of having legal authority, staff will develop a MOU with the County. Therefore, staff seeks direction from the Council to work with the County to develop an MOU and bring it back for Council consideration that will facilitate reimbursement with FEMA for costs related to operating local testing sites within our City, if needed.

City Mobile Testing Sites to Support Vaccine Administration

Discussions with the County Emergency Medical Services Agency Medical Director, Dr. Ken Miller, indicate that the State of California Emergency Medical Services Agency has expanded the paramedic scope of practice to include vaccine administration when a vaccine becomes available. Working through the County Office of Emergency Management and the County Public Health Department, staff is seeking authorization from Council to explore entering into an agreement to support vaccine administration and ensure that the City will be reimbursed for all related costs. Any such agreement will be brought forward to Council for consideration and approval.

Policy Alternative:

Alternative: Do not continue to provide City support for fixed and mobile testing sites in Milpitas

Pros: Savings of $247,000. City staff resources could be used for other City priorities.
Cons: Reduced overall testing capacity in Milpitas and reduced ability to test City employees.

Reason not Recommended: Testing remains a key component of prevention, reduced community transmission and reopening. The City testing efforts have been well-received by the public.

Fiscal Impact:
Additional funding needed for all testing efforts through December 31, 2020 is anticipated to be approximately $155,000, which will be funded from the Unanticipated Expenditure Reserve. Pending County approval of the aforementioned MOU, FEMA reimbursement is anticipated to be 75% or $116,250 plus 5% management fee ($7,750). Total estimated costs of support for testing in Milpitas through December 31, 2020 is $499,000 of which approximately $399,200 is anticipated to be reimbursed. The remaining costs have been and will be covered by the General Fund.

California Environmental Quality Act:
Not applicable

Recommendations:
1. Receive an update regarding the status of COVID-19 testing in Milpitas.
2. Authorize $155,000 to fund the City's mobile testing unit, the County mobile and pop-up testing sites and the fixed testing site at Milpitas Library through December 31, 2020.
3. Direct the City Manager to develop a Memorandum of Understanding with the County of Santa Clara for COVID-19 testing activities retroactive to March 13, 2020 for FEMA reimbursement purposes, if needed.
4. Direct the City Manager to explore developing an agreement with the County to establish a City-operated vaccination site when a vaccine becomes available.

Attachments:
None

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Consider Mayor's Recommendation to Move Up two Current Alternate Members and Appoint One New Alternate Member on the Senior Advisory Commission**
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	10/6/2020
Contact:	Mayor Rich Tran, 408-586-3029
Recommendation:	Receive Mayor Tran's recommendation, and move to appoint the following: 1) Appoint current Alternate No. 1 Willy Wong as a voting Commissioner to a term that will expire in December of 2022. 2) Move current Alternate No. 2 Nona Tolentino into the Alternate No.1 seat, into a term that will expire in December of 2020. 3) Newly appoint Barbara Jo Navarro as Alternate No. 2 into a term that will expire in December of 2021.

Background:
Terms of service on the Senior Advisory Commission (SAC) last for three years, according to the by-laws. Currently, both Alternate Member seats on this Commission are filled, with one vacant voting Commissioner seat that became vacant upon the passing of Denny Weisgerber. Mayor Tran now recommends one new Milpitas resident to be appointed to the Commission. Two alternates shall "move up" and the new applicant will fill the no. 2 alternate seat. All will be appointed to positions through the length of the existing terms.

Commission terms are static, for a length of three years. When a new appointment is made by the Mayor and Council, new members can be appointed into a Commission seat that is half- or partly expired. Thus, the vacant Commission seat has an expiration of December 2022. Alternate No. 1 has a term with expiration of December 2020 and Alternate No. 2 has a term with expiration of December 2021. The new Alternate Member appointed at this City Council meeting on October 6 will be eligible to attend her first regular SAC meeting on Tuesday, October 27 (via zoom webinar).

Recommendation:
Receive Mayor Tran's recommendation, and move to appoint the following to the Senior Advisory Commission:
1) Appoint current Alternate No. 1 Willy Wong as a voting Commissioner to a term that will expire in December of 2022.
2) Move current Alternate No. 2 Nona Tolentino into the Alternate No.1 seat, into a term that will expire in December of 2020.
3) Newly appoint Barbara Jo Navarro as Alternate No. 2 into a term that will expire in December of 2021.

Attachment:
Commission application – BJ Navarro

City Clerk's Office
SEP 21 2020
RECEIVED

COMMISSION APPLYING FOR:	Senior Advisory Commission
Name	Barbara Jo Navarro
Address Type	Residence
Address	915 N. Hillview Driive
City	Milpitas
Postal/Zip Code	95035
Mobile Number	(408) 309-1281
E-Mail Address	navarro_4@sbcglobal.net
Present Employer	Retired, Nasa Ames Research Center
Occupation	Asst. Chief Flight Systems Implementation Branch
Education: If Youth Advisory Commission applicant, indicate your grade/school:	BA and MS
College, Professional, Vocational, or other schools attended	San Jose State University - University of Southern California
Major Subject	Systems Management
Degree	BA - MS

List community organizations to which you belong or have belonged (additional information may be attached).

Name of Organization	Arts Commission
Member	Past Commissioner
Name of Organization	Milpitas Youth Soccer League
Member	Competitive Director
Name of Organization	Milpitas Community Concert Band
Member	Musician

If application is for Veterans Commission, indicate branch and service in any U.S. military organization (retired or active duty).

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):
I retired in 2019 as NASA Technical Manager and joined the Milpitas Senior Center. I had previously been involved in the City of Milpitas Arts Commission and played a key role in selecting the art that now exists inside senior center and the benches that are outside. Prior to COVID-19, I was using the fitness area and was looking forward to participating in additional activities. I was enjoying getting to know some of the seniors and I realized already know three of the present Senior Advisory Commissioners. I believe my breadth of experiences and knowledge. could be helpful to the commission. I have a passion for sharing my knowledge and would like to assist our seniors, so that they can remain healthy and enjoying life. I am a member of St. Elizabeth's St. Vincent DePaul Society as well, where we assist people in our community so that they can remain in their homes when having financial difficulties. I've been living in Milpitas for over 35 years and in the past myself and my family were part of the MVP. Please consider me a candidate to become a Senior Advisory Commissioner. Thank you for your consideration.

Date	Sep 19, 2020

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.

Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant. Once submitted, your application will be submitted to the City Clerk.

NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Conduct a Public Hearing and Approve of the List of Energy and Water Conservation Measures and Consider Adoption of a Resolution Authorizing the City Manager to Execute an Amendment to the Energy Services Agreement with Engie Services U.S., Inc. for the Construction of Energy and Water Conservation Measures in the Amount of $33,983,429.**
Category:	Public Hearings-Community Services and Sustainable Infrastructure
Meeting Date:	10/6/2020
Staff Contact:	**Tony Ndah, Public Works Director, 408-586-2602**
Recommendation:	1. Open the public hearing, receive any comments and move to close the public hearing. 2. Approve list of Energy and Water Conservation Measures developed for the City. 3. Find that the implementation of the proposed projects is categorically exempt under California Environmental Quality Act Guideline Section 15301. 4. Adopt a resolution authorizing the City Manager to execute a contract with ENGIE Services U.S. for energy and water conservation measures identified in Bundles A, B, and C.1 in the amount of $33,983,429, subject to the City obtaining the necessary financing and appropriation of funds. 5. Authorize the City Manager to execute one or more amendments to the Energy Service Agreement to increase the maximum compensation by an aggregate amount not to exceed $3.3 million. 6. Direct the City Manager to return to City Council for authorization to sell approximately $11.3 million of General Fund Lease Revenue Bonds needed to finance the implementation of Bundles B and C.1.

Executive Summary

The City paid over $2,600,000 in electric expenses, $629,000 in water expenses, and $190,000 in gas utility expenses in 2018-2019, across all City facilities and infrastructure. In an effort to save money by reducing the City's energy and water usage, as well as improve energy resiliency at critical City facilities, the City contracted with Engie Services U.S., Inc. (Engie) to perform a Citywide energy and water audit to develop measures for cost-effective energy and water savings in City operations and infrastructure.

The staff recommended scope of work includes installation of automated customer water meters, automated controls at pump stations, and interior plumbing upgrades at City facilities. The recommended scope also includes retrofit of streetlights with LED fixtures; exterior and interior lighting efficiency upgrades at numerous City parks, sports fields, and facilities; and the installation of solar and battery backup systems at critical City facilities to improve the energy resiliency of these facilities during unplanned power outages.

The City entered into an agreement with Fieldman, Rolapp & Associates, Inc. to provide a review of the financial projections for the ECMs, and to develop a finance plan to fund the projects. The cost of these energy conservation measures (ECMs) is estimated to be $33,983,429, as described below; however, there is approximately $23 million in water bonds and other capital funds that would be used to pay for a portion of the recommended scope of work, and projects under the scope of work qualify for rebates and incentives of up to $1.98 million, which would be paid to the City over a 7 year period. Staff is seeking Council authorization to

sell approximately $11.3 million of General Fund Lease Revenue Bonds to finance the implementation of the remainder of the projects in the recommended scope of work.

Staff estimates that the City will realize annual energy and water savings of approximately $1.6 million during the 20-year financing period of the measures. Total net savings over the lifetime of the measures (which range from 10-30 years depending on the measure) is estimated at almost $31 million.

Background:

On February 4, 2020, staff presented a list of preliminary energy and water conservation measures to the City Council, for input on measures that would generate energy and water savings for the City. Council input during the meeting included implementing smart city solutions such as automated water meters and smart interior and exterior lighting, sustainable energy generation, and energy storage solutions for resiliency to ensure that there is a reliable, regular supply of energy and contingency measures in place in the event of a power failure.

On September 15, 2020 the City Council approved an Energy Services Agreement with Engie to perform facility audits and equipment surveys in order to understand the City's current infrastructure and energy/water usage and to make recommendations for improvements that would result in energy and water savings for the City. In addition to cost savings, implementation of potential projects could also result in environmental benefits, improvements in user experience, and enhancement to City facility resiliency. The City has been working with Engie to develop an energy and water savings program that involves two basic phases:

Phase 1 – Project Development: Phase 1 involved Engie identifying and analyzing potential Energy Conservation Measures (ECMs) to implement. Under the first phase of the Agreement, Engie audited and surveyed various City facilities and infrastructure to identify potential ECMs that would lower utility bills or result in other cost savings. The analysis included initial general reviews of utility usage data per facility, operations at the sites, site size, and site and equipment age. Based on the initial general reviews, Engie coordinated with City staff to determine which facilities had the potential for ECMs that could create energy and water cost savings, and the Engie team completed detailed audits and surveys of the infrastructure. Engie summarized the audit and survey results and provided recommendations for equipment upgrades in a Comprehensive Energy Audit (CEA). The purpose of the CEA is to identify and develop project "bundles" that are made up of multiple feasible ECMs. For a bundle of ECMs to be considered feasible, the estimated utility savings over the financing period of each ECM, when aggregated, must equal or exceed the estimated total capital outlay and other expenses associated with developing and implementing the ECMs (meaning there is a net cost benefit to the City).

While in aggregate, a project bundle has an overall cost savings but not every individual ECM included in a bundle must have a projected savings that exceeds the projected cost of implementing that individual ECM. For example, the replacement of a chiller unit may not create sufficient projected energy/water savings to pay for the cost of the procurement and installation of the equipment. In such situations, it might be possible to "bundle" the chiller replacement work with other ECMs to create an overall package that is feasible. In accordance with Phase 1 of the Energy Service Agreement, Engie provided staff with an CEA that identified 15 ECMs. In reviewing the CEA, staff has deemed a majority of the projects to be feasible for implementation.

Phase 2 - Implementing ECMs through an Amendment to the Energy Services Agreement: Phase 2 of the energy and water savings program would be implementation of the selected ECM bundles. In order to do that, the City would need to determine whether to implement one or more feasible bundles identified by Engie in Phase 1 and amend the Energy Services Agreement for implementation of the determined bundles. The City is not obligated to implement any feasible bundles of ECMs identified by Engie during Phase 1.

Amending the agreement to allow for implementation would require the City to develop a financing plan to fund the full project delivery costs, including the procurement and installation of the ECMs, City project management costs, and Engie overhead costs. The City would need to obtain the necessary financing and appropriate funds before proceeding with implementation of a bundle of ECMs. Grants and financial incentives from the State or other agencies (such as PG&E, Silicon Valley Clean Energy, and Valley Water) that could be leveraged to offset implementation costs have also been identified and included in the overall cost analysis for each bund

Through the amended Energy Services Agreement, Engie is also providing a 5-year energy savings guarantee on the City's return on investment for some of the key ECMs to minimize the risk to the City. Through an agreed upon industry-standard methodology, the City and Engie would monitor specific projects post installation and if the anticipated savings are not realized, Engie would make a payment to the City to make up the difference in the cost savings.

Analysis:

I. Energy Conservation Measures

The ECMs have been developed to meet the technical, operational, and financial goals of the City. Various system configurations and technologies have been evaluated for cost-effectiveness and technical consistency. The program used three main criteria to help guide whether an ECM should be included for final recommendation:

a. Technical feasibility – evaluates whether a proposed measure could be safely and effectively installed without incurring significant costs or requiring infrastructure upgrades beyond what would be typically expected. In addition, this criterion looks at whether the proposed measure would be able to operate as intended for the duration of its expected lifetime.

b. Critical needs – ECMs incorporated City staff feedback on what was identified as critical infrastructure, technology, and operational needs to help evaluate ECMs. Some ECMs are recommended for inclusion because they will help the City become more resilient, safe, comfortable, and efficient, aligning with Council and Staff priorities.

c. Financial payback – ECMs were evaluated based on their costs and projected energy, water, and operational savings. While the team did not use a hard and fast metric for payback, the team was able to eliminate measures for recommendation where costs far exceeded savings and were not deemed a critical need.

The proposed scope of energy and water efficiency measures and renewable energy locations were identified by Engie after analyzing multiple system arrangements, system sizing alternatives, and additional savings streams. The ECMs developed consist of the following:

1. Solar Photovoltaics (ECM #1) and Electric Vehicle Charging (ECM #4) – These measures would generate clean, on-site power via solar shade structures and rooftop canopies. These measures would also reduce PG&E charges and protect against rising energy costs. Additional EV charging stations for public and staff use would be included.

2. Battery Energy Storage for Resiliency and Demand Savings (ECM #2) – This measure would help the City avoid peak demand charges and optimize energy rates. Additionally, the battery and energy storage are being considered in conjunction with generators and controls to provide emergency backup power for critical infrastructure and facilities in the event of power outages or shutoffs in the City.

3. High-Efficiency Transformers (ECM #3) – This measure replaces old transformers with newer and more efficient units. This measure also reduces losses, both when operating and in stand-by modes, and improves site electrical infrastructure reliability.

4. Interior and Exterior Facility Lighting (ECM #5) – This measure would upgrade lighting at City facilities to energy efficient LEDs to reduce energy consumption and maintenance costs. This measure also improves indoor lighting quality and safety in parking lots and exterior spaces.

5. Lighting for Streets (ECM #6), Sports Fields (ECM #7), and Parks (ECM #8) – These measures would upgrade exterior lighting to energy efficient LEDs to reduce energy usage, reduce maintenance costs, improve safety, and provide consistency in lighting quality City-wide. Energy-efficient LED lighting is

also being considered at outdoor sports fields for reduced maintenance, improved visibility, and reduced light pollution.

6. Heating, Ventilation and Air Conditioning (HVAC) Upgrades (ECM #9) – This measure is being analyzed to consider repairing, optimizing, and/or replacing ageing HVAC systems, to reduce maintenance costs, extend equipment life, provide energy savings and improve building comfort.

7. Energy Management Systems (ECM #10) – This measure provides City-wide consistency in energy management and control systems to allow easier and more efficient monitoring and adjustment of temperature in City buildings. This measure also allows City staff to have better control of heating and cooling, saving costs and staff time.

8. Irrigation Controls (ECM #11) – This measure improves efficiency and automates the City's irrigation systems to reduce water waste, maintenance, and staff time.

9. Water Fixture Retrofits (ECM #12) – This measure fine tunes valves and fixtures to reduce leakage and water waste and includes installation of water-efficient fixtures where necessary, focusing on user satisfaction.

10. Water Meter Upgrades (ECM #13) – This measure consists of City-wide replacement of residential and commercial water meters to Automated Metering Infrastructure (AMI). Completion of this measure reduces the necessity for manual meter reading, improves accuracy of billing, and leverages grant funding from regional agencies.

11. Supervisory Control and Data Acquisition System (SCADA) (ECM # 14) –This measure would design and install a SCADA system for City-wide water, wastewater, stormwater management. Implementation of this measure reduces costs, improves cybersecurity and system reliability.

During a detailed evaluation of the ECMs, some of the sites and measures initially proposed in the preliminary CEA were not included in the final analysis. Further, the ECMs have been grouped into recommended bundles that are referred to as Bundles A, B, C.1, C.2, and D. Grouping of the ECMs in bundles allows for each of these bundles to contain related measures as follows:

Table 1: Grouping of ECMs into Bundles

Bundle A	Bundle B	Bundle C		Bundle D
Utility Modernization (ECMs with Existing CIP Funding)	**Lighting Upgrade Projects**	**C.1. Energy Resiliency (Solar, Battery Storage, and EV Charging)** Senior Center and Community Center	**C.2. Energy Resiliency (Solar, Battery Storage, and EV Charging)** PD/Public Works and Sports Center	**Building System Upgrades (HVAC, EMS, and Transformer Upgrades)**
Upgrade Water Fixtures (#12)	Facility Lighting (#5)	Solar Panels (#1)	Solar Panels (#1)	Transformer Upgrades (#3)
Water Meters (#13)	Streetlights (#6)	Battery Backup (#2)	Battery Backup (#2)	HVAC (#9)
SCADA (#14)	Field Lighting (#7)	EV Charging (#4)		Energy Management (#10)
	Park Lighting (#8)			

II. ECM Bundles

1. ECMs in Bundle A – Utility Modernization

Bundle A consists of a set projects that have most required funding available in CIP projects related to the projects identified below. However, to ensure full funding, staff will bring forward appropriation actions on October 20, 2020, if Council gives direction to move forward with the implementation of Bundle A. In reviewing the identified ECMs with Engie, staff accepted the project listing within Bundle A, which includes water fixture upgrades (ECM #12), water meter upgrades (ECM #13), and SCADA Pumping and Automated Disinfection (ECM #14).

a. Estimated Bundle A Implementation Costs

The estimated total implementation cost of the ECMs in Bundle A will be $22,614,109. Projects in Bundle A also qualify for rebates and incentives from Valley Water due to the installation of automated water meters, for a total amount of $1,091,790, which would be paid out to the City over 7 years after the City enters into a contract with Valley Water.

b. Estimated Bundle A Net Savings

In the CEA, Engie calculated anticipated energy and water cost savings resulting from implementing Bundle A by comparing the energy and water usage of existing equipment to the anticipated energy and water use of the proposed ECMs over the useful life of the ECMs. Using this approach, Engie estimates that the annual energy and water use reduction resulting from all ECMs in Bundle A will result in a $1,403,192 annual costs savings for the City over 20 years.

Table 2A: Bundle A - Estimated Construction Cost

Cost Description	Amount
ECM Implementation Costs (Engineering, Installation, Overhead & Profit, and 5-year guarantee)	$22,614,109

Table 2B: Bundle A - Estimated Annual Savings and O&M Cost

Cost and Cost Savings Description	Amount
Annual Average O&M Cost (20 years)	$62,926
Estimated Average Annual Energy & Water Savings (20 years)	$1,403,192
Annual Net Estimated Savings	**$1,340,266**

Table 2C: Bundle A - Estimated Lifetime Net Savings

Estimated Cost and Costs Savings Description	Amount
Initial Investment	$22,614,109
O&M Costs (25 years)	$1,711,413
Total Lifetime Costs	**$24,325,522**
Total Lifetime Energy, Water Savings, and Incentives (25 years)	$38,994,670
Lifetime Project Net Savings (25 years)	**$14,669,148**

2. ECMs in Bundle B – LED Lighting Upgrades

Bundle B consists of a set projects lightning projects which includes facility lighting retrofits (ECM #5), street light retrofits (ECM #6), sport lighting retrofit (ECM #7), and park lighting retrofits (ECM #8). This bundle requires financing for implementation.

a. Estimated Bundle B Implementation Costs

The estimated total implementation cost of the ECMs in Bundle B will be $6,872,425. Bundle B Implementation Costs would be financed by the City's proposed 2020 Lease Revenue Bonds. The finance

term will be approximately 20 years and the aggregate all-in true interest cost is estimated at 2.62%. The estimated total Bundle B portion of debt service due over 20 years is estimated to be 9.4 million.

b. Estimated Bundle B Net Savings

In the CEA, Engie calculated anticipated energy cost savings resulting from implementing Bundle B by comparing the energy usage of existing lighting to the anticipated energy use of the proposed ECMs over the useful life of the ECMs. Using this approach, Engie estimates that the annual energy use reduction resulting from all ECMs in Bundle B will result in a $614,086 annual costs savings for the City over the 25 year life of the projects in the bundle.

Table 3A: Bundle B - Estimated Construction Cost and Funding Sources

Cost Description	Amount
ECM Implementation **Costs (Engineering, Installation, Overhead & Profit, and 5-year guarantee)**	$6,872,425
Estimated **Financing Cost**	$2,510,088
Total Costs	$9,208,021

Table 3B: Bundle B - Estimated Annual Savings and O&M Cost

Cost and Cost Savings Description	Amount
Estimated Annual Debt Payment	$475,000
Annual O&M **Cost***	$44,530
Total Annual Cost	**$519,530**
Estimated Average Annual Energy & Water Savings (20 years)	$940,973
Annual Net Estimated Savings	**$421,443**

* Starting in Year 11 after implementation

Table 3C: Bundle B - Estimated Lifetime Net Savings

Estimated Cost and Costs Savings Description	Amount
Initial Investment	$6,872,425
Debt Service (20 years)	$2,510,088
O&M Costs (25 years)	$667,950
Total Lifetime Costs	**$10,050,463**
Total Lifetime Energy, Water Savings, and Incentives (25 years)	$27,366,872
Lifetime Project Net Savings (25 years)	**$17,316,409**

3. <u>ECMs in Bundle C.1 - City Facility Resiliency</u>

Bundle C.1 consists of a set projects that will provide energy resiliency to the Senior Center and Community Center in the event of a power outage and are consistent with the City's climate action plan. Projects in Bundle C.1 also qualify for rebates and incentives, for a total amount of $799,622 from SVCE and SGIP paid out to the City over 5 years and an upfront incentive of $90,000. Although, the estimated savings do not fully pay for this project, due to its benefit to the community staff recommends implementation. In reviewing the identified ECMs with Engie, staff accepted the project listing within Bundle C.1, which includes solar photovoltaic generation systems (ECM #1), battery energy storage (ECM #2), and electric vehicle charging stations (ECM #4) at the Senior Center and Community Center.

a. Estimated Bundle C.1 Implementation Costs

The estimated implementation cost of the ECMs in Bundle C.1 will be $4,461,895 plus $35,000 City paid soft costs for a total implementation cost of $4,496,895. Due to rebates and incentives in the amount of $889,622, the implementation cost to be financed is $3,607,273, which are recommended to be financed by the City's proposed 2020 Lease Revenue Bonds. The finance term will be approximately 20 years and the aggregate all-in true interest cost is estimated at 2.62%. The estimated total Bundle C1 portion of debt service due is estimated to be $4,611,228.

b. Estimated Bundle C.1 Net Savings

In the CEA, Engie calculated anticipated energy cost savings resulting from implementing Bundle C by comparing the energy usage of existing equipment to the anticipated energy use of the proposed ECMs over the useful life of the ECMs. Using this approach, Engie estimates that the annual energy use reduction resulting from all ECMs in Bundle C.1 will result in a $80,000 annual costs savings for the City over the 30 year life of the projects in the bundle.

Table 4A: Bundle C.1 - Estimated Construction Cost and Funding Sources

Cost Description	Amount
ECM Implementation Costs (Engineering, Installation, Overhead & Profit, and 5-year guarantee)	$4,496,895
Rebates and Incentives	(889,622)
ECM Implementation Costs after Rebates and Incentives	$3,607,273
Estimated Financing Cost	$1,003,955
Total Costs	$4,611,228

Table 4B: Bundle C.1 - Estimated Annual Savings and O&M Cost

Cost and Cost Savings Description	Amount
Estimated Annual Debt Payment	$233,000
Annual O&M Cost*	$14,404
Total Annual Cost	**$247,404**
Estimated Average Annual Energy & Water Savings (20 years)	$114,820
Annual Net Estimated Savings/(Costs)	**($132,584)**

* Starting in Year 6 after implementation

Table 4C: Bundle C.1 - Estimated Lifetime Net Savings/(Costs)

Estimated Cost and Costs Savings Description	Amount
Initial Investment	$3,607,273
Debt Service (20 years)	$1,003,955
O&M Costs (30 years)	$423,547
Total Lifetime Costs	**$5,034,775**
Total Lifetime Energy, Water Savings, and Incentives (30 years)	$4,816,826
Lifetime Project Net Savings/(Costs) (30 years)	**($217,949)**

4. <u>ECMs in Bundle C.2</u>

Bundle C.2 consists of a set projects that would provide energy resiliency to the Milpitas Sports Center and the Police/Public Works Department building which houses the City's 911 center. In reviewing the identified ECMs with Engie, staff accepted the project listing within Bundle C.2, which includes solar photovoltaic generation systems (ECM #1) and battery energy storage (ECM #2).

a. Estimated Bundle C.2 Implementation Costs

The estimated total implementation cost of the ECMs in Bundle C will be $6,598,430. Projects in Bundle C also qualify for incentives under California's Self-Generation Incentive Program (SGIP) due to the installation of solar and battery storage at critical City facilities.

In the CEA, Engie calculated the cost of financing Bundle C by assuming a financial term of 17 years at a 2.37% interest rate. When these financing costs are included, the total cost of implementing Bundle C, is approximately $8.2 million.

b. Estimated Bundle C.2 Net Savings

In the CEA, Engie calculated anticipated energy cost savings resulting from implementing Bundle C by comparing the energy usage of existing equipment to the anticipated energy use of the proposed ECMs over the useful life of the ECMs. Using this approach, Engie estimates that the annual energy use reduction resulting from all ECMs in Bundle C will result in a $230,000 annual costs savings for the City over the 30 year life of the projects in the bundle.

Table 5A: Bundle C.2 - Estimated Construction Cost and Funding Sources

Cost Description	Amount
ECM Implementation Costs (Engineering, Installation, Overhead & Profit, and 5-year guarantee)	$6,598,430
Rebates and Incentives	(598,430)
ECM Implementation Costs after Rebates and Incentives	$6,000,000
Estimated Financing Cost	$1,816,963
Total Costs	$7,816,963

Table 5B: Bundle C.2 - Estimated Annual Savings and O&M Cost

Cost and Cost Savings Description	Amount
Estimated Annual Debt Payment	$480,317
Annual O&M Cost*	$58,551
Total Annual Cost	**$538,868**
Estimated Average Annual Energy & Water Savings (20 years)	$296,523
Annual Net Estimated Savings/(Costs)	**($242,345)**

* Starting in Year 6 after implementation

Table 5C: Bundle C.2 - Estimated Lifetime Net Savings/(Costs)

Estimated Cost and Costs Savings Description	Amount
Initial Investment	$6,000,000
Debt Service (20 years)	$1,295,489
O&M Costs (30 years)	$2,072,748
Total Lifetime Costs	**$9,368,237**

Total Lifetime Energy, Water Savings, and Incentives (30 years)	$10,718,263
Lifetime Project Net Savings/(Costs) (30 years)	**$1,350,026**

5. ECMs in Bundle D

Bundle D consists of a set projects that have a simple payback greater than 10 years. In reviewing the identified ECMs with Engie, staff accepted the project listing within Bundle D, which includes transformer upgrades (ECM #3), heating, ventilation, and air conditioning upgrades (ECM #9), and energy management system upgrades (ECM #10).

a. Estimated Bundle D Implementation Costs

The estimated total implementation cost of the ECMs in Bundle D will be $2,957,000. In the CEA, Engie calculated the cost of financing Bundle D by assuming a financial term of 17 years at a 2.37% interest rate. When these financing costs are included, the total cost of implementing Bundle D, is approximately $3.8 million.

b. Estimated Bundle D Net Savings

In the CEA, Engie calculated anticipated energy cost savings resulting from implementing Bundle D by comparing the energy usage of existing equipment to the anticipated energy use of the proposed ECMs over the useful life of the ECMs. Using this approach, Engie estimates that the annual energy use reduction resulting from all ECMs in Bundle D will result in a $30,000 annual costs savings for the City over the 30 year life of the projects in the bundle.

Table 6A: Bundle D - Estimated Construction Cost and Funding Sources

Cost Description	Amount
ECM Implementation Costs (Engineering, Installation, Overhead & Profit, and 5-year guarantee)	$2,957,000
Rebates and Incentives	$0
ECM Implementation Costs after Rebates and Incentives	$2,957,000
Estimated Financing Cost	$869,487
Total Costs	$3,826,487

Table 6B: Bundle D - Estimated Annual Savings and O&M Cost

Cost and Cost Savings Description	Amount
Estimated Annual Debt Payment	$225,087
Estimated Average Annual Energy & Water Savings (20 years)	$46,058
Annual Net Estimated Savings/(Costs)	**($179,029)**

Table 6C: Bundle D - Estimated Lifetime Net Savings/(Costs)

Estimated Cost and Costs Savings Description	Amount
Initial Investment	$2,957,000
Debt Service (17 years)	$869,487
Total Lifetime Costs	**$3,826,487**
Total Lifetime Energy, Water Savings, and Incentives (30 years)	$1,620,827

Lifetime Project Net Savings/(Costs) (30 years)	**($2,205,660)**

III. Staff Recommended Bundles for Implementation

Staff recommends implementation of Bundles A, B, and C.1. The staff recommended Bundles for implementation consist of projects that have existing funds available in the Council approved FY 2020 – 2025 approved Capital Improvement Program, and includes projects that would provide the City with rebates and incentives to offset the cost to the City. The Bundles also have a short payback period and provide the City with energy resiliency at critical City facilities ensuring that there is a regular supply of energy and contingency measures in place in the event of a power failure.

The remaining bundles identified by Engie will be brought to Council on a later date once additional rebates and incentives become available and in accordance with Government Code Section 4217.12, public notice of tonight's proposed action was published in the newspaper two weeks in advance, on September 20, 2020.

The total cost for the installation of the staff recommended bundles is $33,983,429 and there is $14,762,785 available in approved CIP funding for these projects. An additional $7,851,324 would come from reprogramming previously funded programs for water capital and other capital program funds. In addition, the staff recommended bundles qualify for overall incentives and rebates of $1,981,412, to be paid out to the City over seven years.

Staff is also asking Council to authorize the City Manager to execute one or more amendments to the Energy Service Agreement to increase the maximum compensation by an aggregate amount not to exceed $3.3 million; hence, the maximum compensation could be $37,283,429.

IV. Implementation Schedule

A detailed project schedule will be developed as one of the first deliverables under the contract; however, Engie is currently estimating a project completion date of October 2022 for Bundles A, B, and C.1. Energy savings would be realized as early June 2021, with the completion of a portion of the lighting ECMs.

Fiscal Impact:

The maximum not-to-exceed compensation for the Amendment to the Energy Services Agreement with Engie to implement ECM Bundles A, B, and C.1 is $33,983,429, which includes the cost for the construction of the projects, 5-year savings guarantee, and the cost for Engie's overhead and profit. Bundle A is funded primarily from the Water Utility funds and Bundle B and C.1 from the General Government CIP Fund. Since there are insufficient funds in the General Government CIP Fund, the cost for implementing Bundles B and C.1 would need to be financed.

As part of the 2020 – 2025 Capital Improvement Program, Council approved funding for projects in Bundle A only. Staff would utilize funds from the approved CIPs to apply to the costs for implementing the ECMs in Bundle A as follows:

CIP No.	Project Name	Amount
7121	Automated Meter Replacement Program	$6,729,800
7127	Water Supervisory Control and Data Acquisition	$6,533,400
6127	Sanitary Supervisory Control and Data Acquisition	$433,400
3718	Storm Supervisory Control and Data Acquisition	$183,410
	TOTAL	**$13,880,010**

Additional CIP funds for the implementation of Bundle A of approximately $8.7 million would come from reprogramming previously funded projects, advancing planned expenditures from FY 2021-22, and use of fund balances from the water capital and storm drain fund. If Council approves to move forward with Bundle A, The recommended budget adjustments will be brought forward for Council consideration on October 20, 2020.

The cost to implement the ECMs for Bundle B and C.1 is approximately $11.3 million which would need to be financed through the issuance of 20 year General Fund Lease Revenue Bonds. Based on current municipal bond market conditions, the annual estimated average debt service for the implementation of the ECMs in Bundles B and C.1 are estimated to be $708,000 and the annual energy savings from these Bundles is estimated to be $1.056,000, resulting in a net benefit to the City of $348,000 annually. The net energy cost savings derived from implementing the ECMs would be incorporated in the FY 2022-31 Ten-Year General Fund Financial Forecast resulting in a slight reduction of the currently project $9 million structural General Fund deficit. Implementation of the ECMs in Bundles A, B, and C.1 would also result in operations and maintenance savings for the City. Future operations and maintenance savings will be incorporated as part of the development of the annual budget.

If Council agrees to move forward with the financing of $11.3 million, staff intends to combine this amount with the $9 million financing need for the Fire Station #2 Replacement project. Combining the two financing needs will result in one General Fund Lease Revenue Bond issuance in the amount of approximately $20.3 million with lower fixed cost of debt issuance per $1 million of debt issued. Staff intends to bring the authorization of the debt issuance for Council consideration on October 20, 2020.

Policy Alternatives:

Alternative 1: The City could utilize the details within the CEA and implement the ECMs on its own, without the project management of Engie.

Pros: By implementing the energy improvements in-house, the City will not be required to contract with Engie, thus reducing contractor overhead costs.
Cons: The City would be required to perform all project related activities, including the design, engineering, procurement, and installation of the ECMs, which would consume City staff resources. The City would still have to compensate Engie for the completion of the CEA, at a cost of $150,000.
Reason for not recommending: This direction is not recommended as the City does not have the resources to administer such work with existing resources and would need to consider outsourcing the work to third party contractors.

California Environmental Quality Act:

The project is exempt from the California Environmental Quality Act (CEQA) per Guidelines Section 15301 as the project involves only the minor alteration of existing public facilities, i.e. installation and/or retrofit of existing streetlights, indoor and outdoor park and facility lighting, indoor plumbing fixtures and water meter equipment, and does not involve the expansion of any use.

Recommendation:

1. Open the public hearing, receive any comments and move to close the public hearing.
2. Approve list of Energy and Water Conservation Measures developed for the City.
3. Find that the implementation of the proposed projects is categorically exempt under California Environmental Quality Act Guideline Section 15301.
4. Adopt a resolution authorizing the City Manager to execute a contract with ENGIE Services U.S. for energy and water conservation measures identified in Bundles A, B, and C.1 in the amount of $33,983,429, contingent upon the City obtaining the necessary financing and subject to the appropriation of funds.
5. Authorize the City Manager to execute one or more amendments to the Energy Service Agreement to increase the maximum compensation by an aggregate amount not to exceed $3.3 million.
6. Direct the City Manager to return to City Council for authorization to sell approximately $11.3 million of General Fund Lease Revenue Bonds needed to finance the implementation of Bundles B and C.1.

Attachment:

1. Resolution Regarding Construction of Energy Conservation Measures
2. Draft Amendment No. 1 to the Agreement with Engie
3. Original Contract Engie Services U.S., Inc.

RESOLUTION NO. _

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS MAKING FINDINGS ON ENERGY SAVINGS UNDER CALIFORNIA GOVERNMENT CODE SECTION 4217.10 ET SEQ. AND DETERMINING OTHER MATTERS IN CONNECTION WITH AN ENERGY SERVICES AGREEMENT; FINDING THE ACTION EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; AND APPROVING THE ENERGY SERVICES AGREEMENT AMENDMENT

WHEREAS, it is the policy of the State of California and the intent of the State Legislature to promote all feasible means of energy conservation and all feasible uses of alternative energy supply sources; and

WHEREAS, California Government Code Section 4217.10 *et seq*. authorizes a public agency to utilize any procurement process, such as a cooperative purchasing schedule, to contract for energy services if its governing body determines, at a regularly scheduled public hearing, public notice of which is given at least two weeks in advance, that the anticipated cost to the agency for the energy services project will be less than the anticipated marginal cost to the agency of electrical energy that would have been consumed by the agency in the absence of the energy services contract; and

WHEREAS, the City of Milpitas ("City") desires to reduce the steadily rising costs of meeting the energy needs at its facilities; and

WHEREAS, the City previously awarded and entered into a two-phase energy services agreement and related contract documents ("Energy Services Agreement") with Engie Services U.S., Inc. ("Contractor"), pursuant to which Contractor will provide an energy audit and perform other project development tasks during phase 1 ("Phase 1") and subsequently design, construct, and install specified energy conservation measures, which will reduce the cost of energy to the City during phase 2 ("Phase 2") (collectively, the "Project"); and

WHEREAS, Contractor has completed Phase 1 and provided the City with analysis showing the benefits of implementing certain energy conservation measures as well as the cost of the same ("Analysis"), which Analysis is attached hereto as **Exhibit A** and made a part hereof by this reference; and

WHEREAS, the Analysis includes data showing that the anticipated cost to the City for electrical energy and conservation services provided by the Project will be less than the anticipated cost to the City of electrical and other energy that would have been consumed by the City in the absence of such measures; and

WHEREAS, the City and Contractor desire to amend the Energy Services Agreement to incorporate the identified and agreed upon energy conservation measures developed during Phase 1 as part of the scope of Phase 2 as well as make corresponding changes to the Energy Services Agreement to carry out the Project ("Amendment"); and

WHEREAS, the Amendment will be in substantially the form presented at this meeting, subject to such changes, insertions or omissions as the City Attorney reasonably deems necessary following the Council's adoption of this Resolution; and

WHEREAS, in accordance with Government Code section 4217.10 *et seq*., on September 20, 2020, the City published notice of a public hearing at which the City Council would consider this Resolution;

WHEREAS, the sites where the Project will be located are at multiple facilities and sites throughout the City of Milpitas; and

WHEREAS, the City's proposed approval of the Amendment is a "Project" for purposes of the California Environmental Quality Act ("CEQA"); and

WHEREAS, the Guidelines for CEQA, California Code of Regulations Title 14, Chapter 13 ("State CEQA Guidelines"), exempt certain projects from further CEQA evaluation; and

WHEREAS, the City has reviewed the proposed Project and has determined that it is exempt from the provisions of CEQA pursuant to the State CEQA Guidelines and that no exceptions to the exemption apply.

NOW, THEREFORE, based upon the above-referenced recitals, the City Council hereby finds, determines and orders as follows:

1. Per California Government Code section 4217.10 *et seq*., the City Council hereby finds and determines that all of the recitals set forth above are true and correct.

2. The terms of the Amendment in the form presented at this meeting are in the best interests of the City.

3. In accordance with Government Code section 4217.12, and based on data provided by the Analysis, the City Council finds the anticipated cost to the City for electrical energy and conservation services provided by the Project will be less than the anticipated marginal cost to the City of electrical and other energy that would have been consumed by the City in the absence of the Project.

4. The Project is hereby found to be exempt from the requirements of CEQA on multiple grounds, each of which is independently sufficient to exempt the whole of the Project from CEQA, including:

a. The Project is exempt from CEQA under a Class 1 categorical exemption for Existing Facilities (14 C.C.R. § 15301) because it involves the minor alteration of existing facilities with improvements that would lead to negligible or no expansion of use beyond the use existing at this time. In all, the Project would result in net environmental benefits by reducing traditional electrical energy consumption of the City. Therefore, the Project would be exempt under a Class 1 exemption.

b. The Project is also exempt from CEQA under a Class 2 categorical exemption for Replacement or Reconstruction (14 C.C.R. § 15302) because it involves the replacement and reconstruction of existing water meters, lighting, and solar facilities where the new structures will be located on the same site as the structures being replaced and will have substantially the same purpose and capacity.

c. The Project is also exempt from CEQA under a Class 3 categorical exemption for New Construction or Conversion of Small Structures (14 C.C.R., § 15303) because the water meters, control systems, lighting upgrades, and solar installations are small structures and only minor modifications are needed.

d. The Project is also exempt from CEQA under a Class 11 categorical exemption (14 C.C.R., § 15311) because it involves the construction of minor structures accessory to existing facilities. As explained above, the Project involves installation of energy efficient fixtures and improvements at existing City owned facilities.

e. The Project is also exempt from CEQA under the Common Sense Exemption (14 C.C.R., § 15061) because the Project involves installation of energy efficient fixtures and improvements at existing City owned facilities that will benefit the environment by creating more energy efficient facilities.

f. None of the exceptions to the categorical exemptions apply. 14 C.C.R. § 15300.2. Specifically, the Project is not located in a particularly sensitive environment. The improvements will be installed on existing structures in developed areas. The cumulative impact of successive projects of this same type in the same place over time would not be significant because the facilities are limited in size. As explained above, the Project involves installation of energy efficient fixtures and improvements at City owned facilities. These types of improvements are not unusual. Moreover, the building impacted by the Project is not located within an officially designated state scenic highway. Thus, the Project would not have an impact in this regard. Similarly, the proposed improvements are not located on sites designated pursuant to Government Code section 65962.5. Finally, the Project does not involve any improvements, modifications, or other changes to a historical resource. Therefore, none of the circumstances outlined in Title 14, California Code of Regulations, section 15300.2 apply.

5. The City Council hereby approves the Amendment to the Energy Services Agreement, in accordance with Government Code section 4217.12.

6. The City Manager, or his or her designee, is hereby authorized and directed to negotiate any further changes, insertions and omissions to the Energy Services Agreement as are reasonably deemed necessary, and thereafter to execute and deliver the Energy Services Agreement following the City Council's adoption of this Resolution. The City Manager is further authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits and other documents and to do or cause to be done any and all other acts and things necessary or proper for carrying out this resolution and said agreements.

7. This Resolution shall take effect immediately upon its passage.

PASSED AND ADOPTED this ___ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Rich Tran, Mayor

APPROVED AS TO FORM:

_____
Christopher J. Diaz, City Attorney

Exhibit A

Investment Grade Audit Report

[*Attached Behind This Page*]

Comprehensive Energy Analysis

Guaranteed Energy and Water Savings Program
City of Milpitas

October 6, 2020

ENGIE Services U.S. Inc.
4020 Moorpark Avenue, Suite 100
San Jose, CA 95117

Comprehensive Energy Analysis Report

City of Milpitas Guaranteed Energy and Water Savings Program

Revision 3
October 06, 2020

Submitted to:

City of Milpitas
455 E. Calaveras Blvd
Milpitas, CA 95035

Submitted by:

ENGIE Services U.S. Inc.
4020 Moorpark Ave, Suite 100
San Jose, CA 95117

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1. Executive Summary

ENGIE Services U.S. (ENGIE) is pleased to present this Comprehensive Energy Analysis (CEA) report to the City of Milpitas (City). The comprehensive energy and water program outlined within this report includes both efficiency and renewable measures and represents the best ways to decrease water and energy consumption and reduce reliance on energy from the grid.

1.1. Program Strategy: City of Milpitas

ENGIE appreciates the valuable input the City has provided through meetings, site walks, data requests, and supplemental information as we designed this comprehensive energy and water savings program to align with key goals across the City. These key goals included reducing energy and water consumption, peak energy demands, and maintenance and operations costs to the City; expanding the City's use of renewable energy and storage; working via a turn-key design-build approach to improve City infrastructure; and garnering positive public recognition. Throughout the audit process, these goals were front and center, as we worked to design an innovative, paid-from-savings partnership that will help the City of Milpitas become more efficient, sustainable, responsive, and resilient.

Table 1. Energy Conservation Measure (ECM) Summary Matrix

Description	Solar PV	EV Chargers	Battery Storage/ Resiliency	High Efficiency Transformers	LED Lighting (Interior/Exterior, Parks, Sports, Streetlights)	HVAC Upgrades	EMS Upgrades	Facilities Water Retrofits	Water Meters Upgrades	SCADA, Pumping, and Automated Disinfection
City Hall	x	x	x	x	x	x		x		
Public Works	x	x	x	x	x	x	x	x		
Corp Yard and Vehicle Shop										
Police Department										
Community Center	x		x		x	x [x]		x		
Senior Center	x	x	x		x			x		
Sports Center Complex	x	x		x	x	x		x		
Library Parking Garage					x					
Fire Station No.1			x		x	x		x		
Main Fire Admin										
Fire Training Center										
Fire Station No. 3					x	x		x		
Fire Station No. 4					x	x		x		
Pumping Stations					x					x

Description	Solar PV	EV Chargers	Battery Storage/ Resiliency	High Efficiency Transformers	LED Lighting (Interior/Exterior, Parks, Sports, Streetlights)	HVAC Upgrades	EMS Upgrades	Facilities Water Retrofits	Water Meters Upgrades	SCADA, Pumping, and Automated Disinfection
PRVs										o
City-wide					x *			x	x	x

Legend:

x = Included in proposal

o = Not included in proposal, could be handled within an allowance

* = Sports Lighting included for Cardoza (baseball and softball), Hall Memorial (soccer), and Dixon Landing parks

× = Includes ductwork replacements for AC-2 and AC-7

The checked boxes in the above table are measures we have included in our CEA report. Our study revealed opportunities to use energy and water more efficiently and expand the use of renewable energy across multiple City facilities, strengthening the City's long-term fiscal position and sustainability while simultaneously engaging the community and showcasing an innovative approach to improving City infrastructure.

We used three main criteria to help guide whether a measure should be included for recommendation:

1) Technical feasibility: we evaluated whether a proposed measure could be safely and effectively installed without incurring significant costs or requiring infrastructure upgrades beyond what would be typically expected. In addition, we evaluated whether the proposed measure would be able to operate as intended for the duration of its expected lifetime. For example, ECMs at Fire Station No. 2 were removed from the scope of work due to the station's planned demolition.

2) Critical needs: we incorporated City staff feedback on what they identified as critical infrastructure, technology, and operational needs to help evaluate ECMs. Some ECMs are recommended for inclusion because they will help the City of Milpitas become more resilient, safe, comfortable, and efficient, aligning with Council and Staff priorities. ECMs that were included for recommendation as a critical need include SCADA and battery storage for backup power.

3) Financial payback: we evaluated measures based on their costs and projected energy, water, and operational savings. While we did not use a hard and fast metric for payback, we were able to eliminate measures for recommendation where costs far exceeded savings and were not deemed a critical need. One example of this is the rooftop solar at the library parking garage. This ECM was removed from the scope due to the ECM requiring significant PG&E upgrades that would far exceed any projected savings.

During our detailed evaluation, some of the sites and measures initially proposed in the preliminary CEA were not included in our final analysis. We have included some of these details in Appendix A. Further, we have grouped recommended measures into various bundles that we refer to as Bundles A, B, C, and

D. Bundle C has been split into C1 and C2 due to availability of funds and City priorities. Each of these bundles contain related measures as follows:

Bundle A: facility water retrofits, water meter AMI retrofits, and SCADA

Bundle B: LED lighting retrofits (for facilities, parks, streets and sports)

Bundle C: solar PV, battery storage/microgrids, and EV chargers. C1 puts these measures at the Senior Center and Community Center. C2 puts them at Public Works, Sports Center, and City Hall.

Bundle D: HVAC, EMS, and transformer upgrades

1.2. Program Savings Impact, Scope & Financials

1.2.1. Savings Impact

ENGIE congratulates the City for its continued commitment to fiscal and environmental sustainability. This comprehensive program will showcase the City as a responsible and innovative steward of the community's assets. By installing the proposed lighting, mechanical, water, and solar photovoltaics (PV) systems highlighted in this report, the City will conserve over 5,800,000 kWh of electricity per year, providing savings to the general fund while hedging against future energy and utility price increases. According to PG&E's Emission Factors and the EPA's Greenhouse Gas (GHG) Equivalencies Calculator, the annual energy savings of this project can be equated to the reduction of either of the following:

- GHG emissions of nearly 900 passenger vehicles
- Carbon sequestered by over 5,400 acres of U.S. forests in one year

Additionally, the City stands to save more than $1,800,000 in energy and water costs per year and over $690,000 in maintenance costs. Net of a typical financing approach, the City will realize substantial annual savings without any upfront costs.

1.2.2. Scope

ENGIE focused the program development effort, refined recommendations, and established project priorities according to our discussions with City staff. The CEA report includes five solar PV systems, up to six battery storage systems, high efficiency transformers, LED lighting retrofits, HVAC and energy management system (EMS) upgrades, water meter replacements, water conservation measures, and SCADA implementation. Table 2 summarizes these projects and the associated savings.

Table 2. City of Milpitas CEA Savings Summary

ECM #	Description	Annual Energy/Water Cost Savings	Annual Maintenance Cost Savings	Projected Incentives
1	Solar Net Energy Metering (NEM)	$289,156	N/A	
2	Battery Storage	$37,532	N/A	$1,915,350
3	Transformer Upgrades	$23,110	N/A	
4	EV Chargers	N/A	N/A	
5	Interior + Exterior Lighting	$239,940	$80,396	
6	Streetlights	$324,318	$52,125	
7	Sports Lighting	$11,627	$2,625	
8	Park Lighting	$38,201	$7,729	
9	HVAC Upgrades	$5,754	$81,930	
10	EMS Upgrades	N/A	$8,320	
11	Irrigation Controls	N/A	N/A	
12	Water Fixture Upgrades	$31,282	$1,090	
13	Water Meter Upgrades	$681,871	$416,000	$1,091,790
14	SCADA, Pumping, and Automated Dosing	$146,612	$41,600	
15	Continuous Monitoring	N/A	N/A	
TOTAL		**$1,829,403**	**$691,815**	**$3,007,140**

Later in this document, in Section 5.3, we include example pro-formas for an optimized package of measures that strikes a balance between City priorities and maximizing first-year savings.

As presented, the entire comprehensive package and the optimized bundle of measures has enough energy, water, and maintenance savings to outweigh any capital or financing costs in year one and over the life of the measures. Later in this document, we outline options to fund the program. ENGIE does not act as a municipal advisor but can facilitate financial option review and has assisted with the solicitation process. In partnership with City staff, ENGIE is prepared to present the findings to the City Council in accordance with City business objectives and standards.

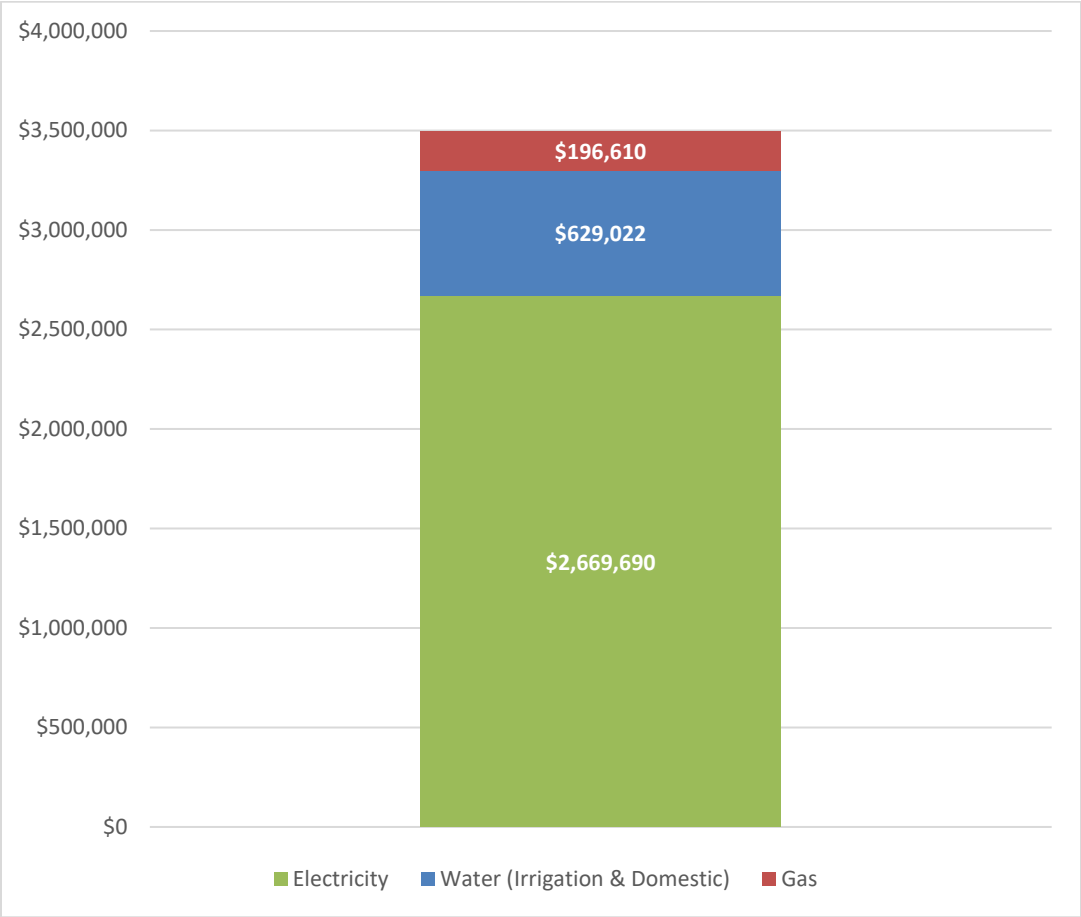
2. Utility Analysis

This section of the CEA documents and discusses the City of Milpitas's electricity, natural gas, and water use. Our analysis of existing utility usage forms the basis for conservation recommendations. The following data is included in this section:

1. Historical electricity usage and cost information
2. Historical natural gas usage and cost information
3. Historical water usage and cost information

The City of Milpitas provided ENGIE access to all available historical utility usage and cost data. This data was reviewed for completeness, reorganized into a format that is easy to use and understand, and analyzed for historical trends. The data was used to develop utility usage profiles per account, total energy usage for the City of Milpitas, and unit costs for each utility. The baselines that follow were developed by evaluating the annual usage for each type of utility.

Figure 1. Annual City Utility Expenses



2.1. Electricity

ENGIE received utility data history from Pacific Gas & Electric (PG&E) and Silicon Valley Clean Energy (SVCE) from 2018 and 2019. Table 4 shows the main electric meters and accounts that were included in the analysis.

Table 3. Electric Meters and Accounts Included in Utility Analysis

Address	Description	Account SAID#	Meter #	Rate	Electrical Consumption (kWh)	Dollars Per Year
455 East Calaveras Blvd	City Hall	2637174597	1010252574	A-10-B	1,564,487	$311,796
1265 North Milpitas Blvd	Public Works, Corp Yard, Vehicle Shop, Police Department	2637174111	1010024817	E-19-S	1,842,143	$305,853
457 East Calaveras Blvd	Community Center	2636559012	1010249154	A-10-A	156,475	$38,675
40 North Milpitas Blvd	Senior Center	3076453385	1010124977	A-1-A	265,799	$62,751
1325 East Calaveras Blvd	Sports Center Complex	2637174186 9699211830 2637174770 263717449	1010238909 1010085700 1009889477 1010002058	NEM E-19-S NEM A-6 NEM A-6 A-ST-S	336,718 131,115 85,404 0	$124,141 $29,212 $18,985 $703
160 N Main Street	Library Parking Garage	9945958031 9949177615	1010124979 1009568669	A-10-A A-1-B	192,201 8,949	$38,984 $2,268
777 South Main Street	Fire Station No.1 Main Fire Admin	2636180897 2637174118	1010249156 1006709151	A-10-A A-1-B	173,376 28,700	$37,304 $6,958
1263 Yosemite Dr.	Fire Station No. 2	2639561577	1010245866	A-6	51,340	$13,495
45 Midwick Dr.	Fire Station No. 3	2637174356	1008832236	A-6	40,081	$11,019
775 Barber Lane	Fire Station No. 4	2637174886	5000111523	A-6	41,364	$10,872
Kennedy Dr.	Cardoza Park	2637174964	1010091118	A-6	39,739	$9,317
TOTAL					**4,957,891**	**$1,022,333**

Figures 2 and 3 show the monthly electric consumption for 2018-2019.

Figure 2. Monthly Electricity Consumption – Large Meters

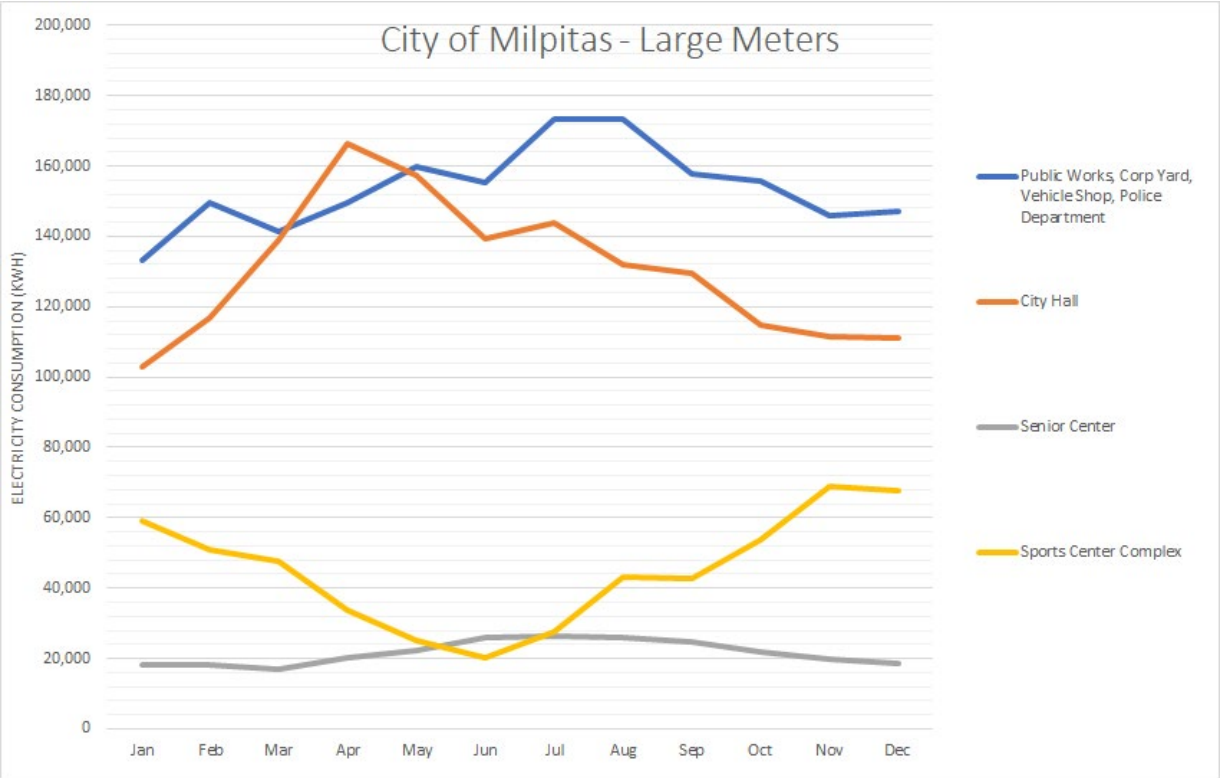
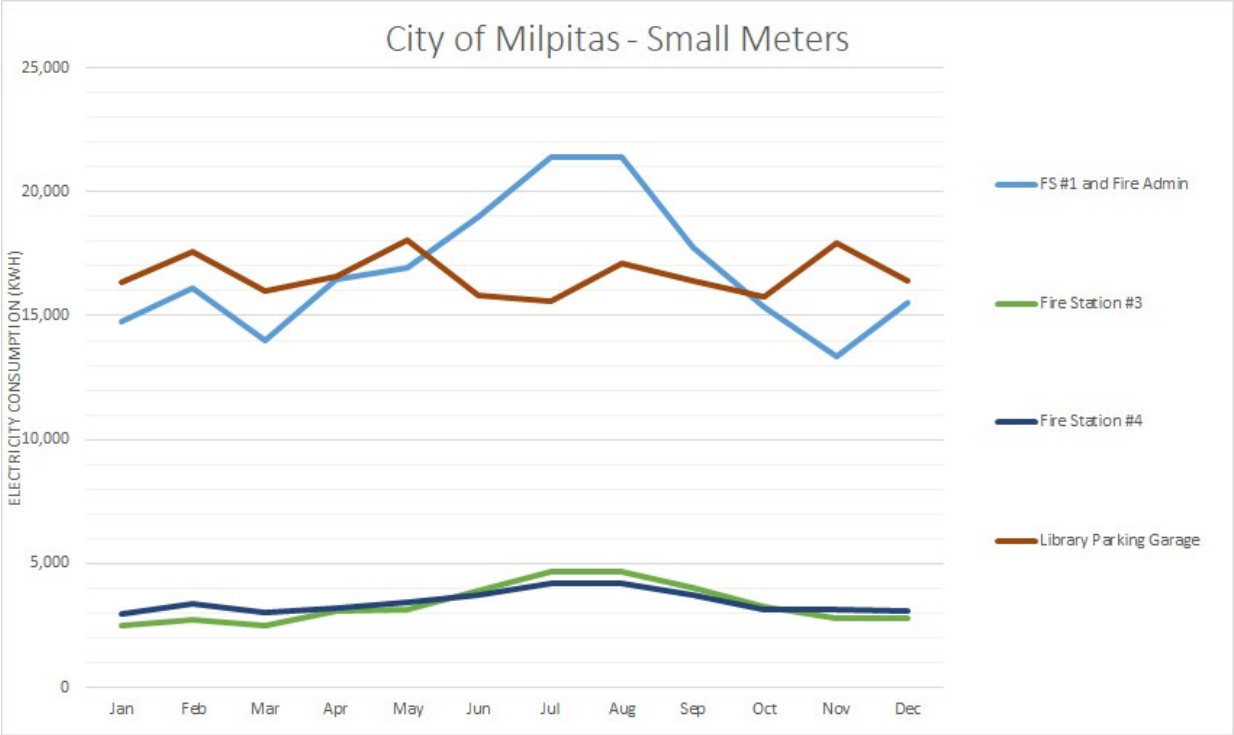


Figure 3. Monthly Electricity Consumption – Small Meters



2.2. Natural Gas

ENGIE received natural gas utility data history from PG&E and The Association of Bay Area Governments (ABAG) from 2018 and 2019. Table 5 shows the main gas meters and accounts that were included in the analysis.

Table 4. Gas Meters and Accounts Included in Utility Analysis

Address	Description	Account SAID#	Meter #	Rate	Gas Consumption (Therms/yr)	Dollars Per Year
1265 North Milpitas Blvd	Public Works, Corp Yard, Vehicle Shop, Police Department	6866163053, 6907829717	45005345, 44813054	GNR1	58,757	$63,886
455 East Calaveras Blvd	City Hall	5823673248	54049721	GNR1	33,946*	$34,160*
457 East Calaveras Blvd	Community Center	5740339920	002838A	GNR1	2,967	$4,004
40 North Milpitas Blvd	Senior Center	7318172437	60836494	GNR1	2,437	$3,073
777 South Main Street	Fire Station No.1 Main Fire Admin	6584551011	46300804	GNR1	6,700	$8,875
1263 Yosemite Drive	Fire Station No. 2	7282444687	61448793	GNR1	1,347	$1,886
45 Midwick Drive	Fire Station No. 3	9490697568	50138352	GNR1	1,574*	$2,002*
775 Barber Lane	Fire Station No. 4	6122456562	29647607	GNR1	2,533	$3,488
1325 E Calaveras	Sports Center	9900277988	Not Available	GNR1	76,776	$75,236
TOTAL					**187,037**	**$196,610**

*Based on 2017-2018 usage due to incomplete 2018-2019 data

2.3. Water

ENGIE received water data history from the City of Milpitas from 2017 and 2018. Table 6 shows the City's annual irrigation and domestic water usage. The City provided 94 irrigation and 42 domestic water accounts. Some accounts did not include 365 days of usage but are still included in the table below.

Table 5. Water Accounts Included in Utility Analysis

Description	Rate	Water Consumption (CCF)	Dollars Per Year
Irrigation	ICP	119,479	$612,927
Domestic	WCITY	82,567	$16,095
TOTAL		**202,046**	**$629,022**

3. Energy Conservation Measures

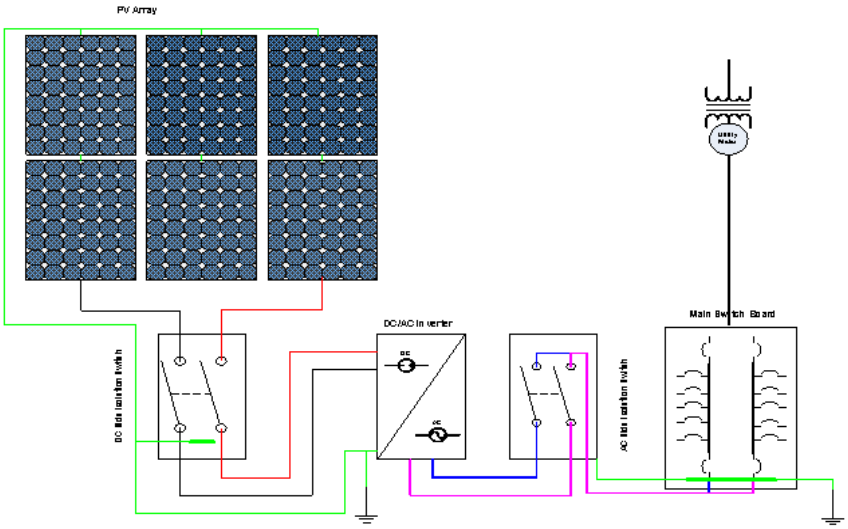
This comprehensive program has been developed to meet the technical, operational, and financial goals of the City. Various system configurations and technologies have been evaluated for cost-effectiveness and technical consistency with the City's objectives.

The proposed scope of energy and water efficiency measures and renewable energy locations were identified by ENGIE after analyzing multiple system arrangements, system sizing alternatives, and additional savings streams. ENGIE greatly appreciates the City's contributions to date to help refine the program scope: time spent on site walks and meetings, answers to questions, and overall dedication to the project development process.

3.1. ECM 1: Solar Photovoltaic Power Generation

A PV system converts sunlight directly to electricity. A typical system consists of arrays of PV modules (panels), electrical conversion equipment (inverters), electrical distribution equipment, and monitoring equipment.

Figure 4. General Photovoltaic System Schematic



3.1.1. PV Module

A PV array is best mounted in an area of good solar exposure. Shading of the modules impacts production and must be avoided. The PV modules in the array are typically mounted on rack structures which support them at a low angle of tilt, oriented to optimize production and revenue based on utility rate structures. Modules are connected in a series – a "string" – to produce near 1,000 volts (at their maximum power point). Several strings are tied together in parallel and connected to an inverter.

3.1.2. Inverter

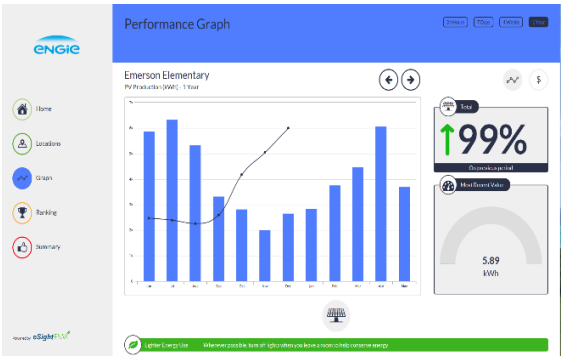
The inverter converts the variable direct current (DC) electricity produced by the PV modules to common alternating current (AC), which is the standard form of utility-provided electricity. It contains sophisticated control logic to maximize the solar output and to synchronize the AC output with the grid to which it is connected. In the event the utility power fails, the PV inverter will immediately disconnect the PV system – this is a key safety requirement by the utility company. Upon restoration of utility power, the inverter will be delayed for a preset period, and then automatically reconnect.

3.1.3. Monitoring Equipment

ENGIE provides a program that collects data into a format that is easily accessible to the City of Milpitas. ENGIE provides a user-friendly, web-based dashboard whereby City staff can view details about the PV system, track the instantaneous system performance, and pull tailored reports as required. This information can also be provided to community members and stakeholders to demonstrate the facility's sustainability features.

Figure 5. Overview Screen

Figure 6. Technical User Dashboard



3.1.4. Solar Benefits

- Local electricity production – Reduce the amount of energy purchased from local utility by adding more on-site solar PV production
- Equity across City sites – Expand the use of solar energy across facilities
- Environmental stewardship
- Positive public recognition
- Shade for parked cars with canopy structures
- Hedge against increasing electric rates

3.1.5. Net Energy Metering (NEM) Solar PV

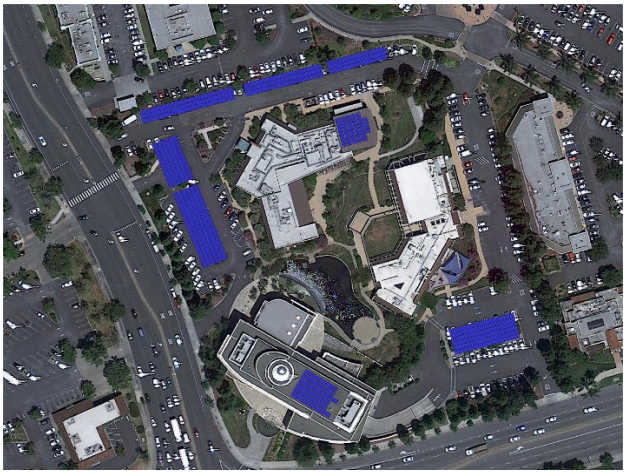
As part of the comprehensive energy analysis, ENGIE surveyed the City of Milpitas for renewable energy opportunities. The City has existing solar PV at the Milpitas Sports Center, but it does not currently offset the entire load of the facility. After site walks and review of site energy usage, ENGIE determined four sites for additional solar PV. Each solar PV system is designed to offset as much of the facility's electric usage with clean, renewable, on-site generation as we can reasonably fit at each site, under the utility's Net Energy Metering (NEM) rates.

A summary of the sites, proposed systems, and associated benefits are shown below in Table 7. The Bundle C ECMs of Solar PV, Battery Storage/ Resiliency, EV Chargers, were divided into C1 and C2 per City staff request, with C1 included in Group 1 (higher priority sites) and C2 in a future Group 2. C1 includes the Senior Center and the Community Center, and C2 includes the City Hall, Public Works/ Police Dept, and the Sports Complex. Total costs are estimated at $6.11MM with a simple payback of 21 years. The solar systems listed below have been designed using the monthly data that was provided by PG&E and SVCE. ENGIE has analyzed the 15-minute interval data and the detailed load profiles to ensure the solar is adequately sized for each meter's consumption.

Table 6. ECM 1 Solar Photovoltaic NEM Summary

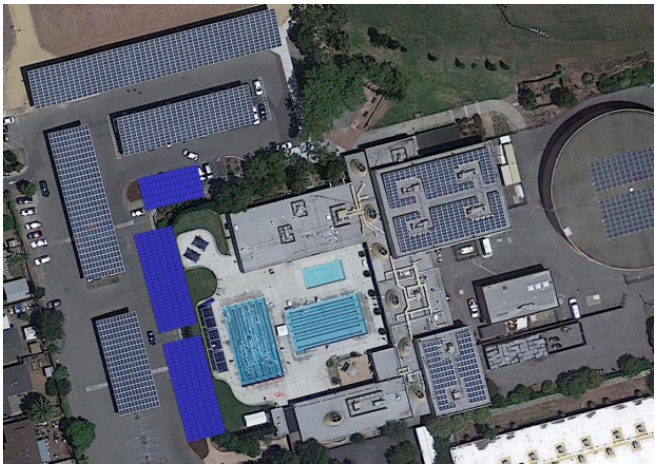
Site	Proposed System Type	System Size (kW DC)	Projected First Year kWh Generated	Projected First Year Cost Savings
City Hall (C2)	Canopy & Roof Mount	212	312,386	$43,471
Public Works, Corp Yard, Vehicle Shop, Police Department (C2)	Canopy	538	831,654	$100,852
Sports Center (C2)	Canopy	189	305,870	$65,521
Senior Center (C1)	Canopy & Roof Mount	137	213,126	$49,295
Community Center (C1)	Canopy	76	122,413	$30,017
TOTAL		**1,151**	**1,785,449**	**$289,156**

City Hall/ Senior Center/ Community Center



Public Works/Police Department/Corp Yard

City of Milpitas Sports Center



3.1.6. Design Considerations

Solar PV system design requires a multi-disciplinary review of each project site. Design considerations include the size and openness of the available area, existing structure or land use, potential shading of the panels, fire lanes, building code requirements, and ease of electrical interconnection. For rooftop and parking structure systems, an evaluation of the existing structure is performed to ensure the existing infrastructure can support a solar PV system. For all systems, existing electrical equipment is evaluated to determine the most cost-effective point of interconnection. ENGIE also considers impact on building usage, maintenance, accessibility, serviceability, and security. In addition to the general design considerations, each recommended solar PV system was optimized for existing site conditions, usage requirements, and where arrays would benefit City staff and residents the most. Site-specific considerations are described below.

City Hall, Community Center & Senior Center

The City Hall, Community Center, and Senior Center roofs were preliminarily evaluated (based on available drawings and roof reports) to ensure that they can adequately support the new systems without reinforcements. The City Hall and Senior Center roofs were recommended to include solar PV, and the Community Center roof was not recommended for solar PV. Additionally, existing roof equipment and its shading, as well as permitting setback requirements, were all taken into consideration to determine whether a cost-effective quantity of solar panels could fit into each proposed roof. ENGIE has coordinated with City staff regarding tree removal considerations to minimize shading on the proposed arrays while maintaining the site's aesthetics, minimizing removal of essential trees which define the site's character, and instituting an on-site tree replanting policy at a 2:1 rate. A thorough shading analysis has been performed to evaluate potential shading impacts on solar PV production. Additionally, extra tall carports (13'6" minimum clearance) are recommended at these sites to minimize shading from the tall perimeter trees and the tall City Hall building. ENGIE also had detailed conversations with City staff about the look of the solar arrays at this site, proposing additional decorative features to better align with the site's aesthetic design.

Public Works/Corp Yard

Extra tall carports are recommended at this site to accommodate truck or bus parking and access, as well as minimize shading. These carports have a 13'6" minimum clearance to provide adequate access to taller vehicles. A thorough shading analysis has also been performed to evaluate potential shading impacts from the two-story Public Works building on the adjacent parking canopies, and from tall surrounding trees. Any trees that need to be removed due to physical conflicts with the new arrays or shading concerns will also be replanted on-site at a 2:1 rate. Atrium solar was also considered, but ultimately not recommended due to prohibitive costs from required structural upgrades.

City of Milpitas Sports Center

The new solar PV system at the Sports Center is designed to offset the remaining energy consumption of the Sports Center that is not already offset from the existing solar PV system. The canopy option expands on the current site design, shading additional parking spots. Any trees that need to be removed due to physical conflicts with the new arrays or shading concerns will also be replanted on-site at a 2:1 rate.

3.1.7. Other Solar PV

During the CEA, ENGIE also identified three other sites with potential for more creative solar strategies, utilizing PG&E's Renewable Energy Self-Generation Bill Credit Transfer (RES-BCT) program. This included parking garage solar canopies at the Library and floating solar at two City parks. Ultimately, based on field findings and conversations with City staff, ENGIE is not recommending that the City move forward with these designs. More details on the initial designs that were proposed are outlined in Appendix A.

3.2. ECM 2: Battery Energy Storage System

ENGIE is the country's leading developer of turnkey distributed energy storage solutions with more than 88 MWh of Battery Energy Storage System (BESS) at over 170 sites deployed and in development. Our team consists of top energy storage industry experts who provide performance-based solutions to optimize the value of energy for our customers. ENGIE evaluates battery manufacturers based on their quality, performance, and pricing to provide the best BESS solutions to our customers.

3.2.1. BESS Benefits

- Reduced maximum demand each billing period – reduce electrical bills by substantially reducing the maximum non-coincidental and peak demands logged each month
- Environmental stewardship – reduce overall GHG emissions by reducing energy consumption during peak times of day when utilities typically bring the least efficient "peaker plants" online to meet high demand on the grid
- Positive public recognition
- Diversify the City's energy portfolio and hedge against increasing electric rates
- Provide electricity during utility power outages, allowing critical City services to continue operating with only minor disruptions.

The City of Milpitas has expressed strong interest in creating microgrids for their community. Due to increased utility unreliability, such as Public Safety Power Shutoff (PSPS) events, the availability of a microgrid is more valuable than ever. ENGIE has evaluated the City's facilities for microgrid opportunities. The BESS size and savings are dependent on analyzing the 15-minute demand load profile. Resiliency needs are critically beneficial for the city and community and yet difficult to represent financially due to the unpredictable nature of the resiliency backup timing and needs. Facilities on rates such as E-19 and A-10, with high demand charges, are the best candidates for financially recommended BESS systems, which include Public Works, City Hall and the Sports Center. These sites also have existing diesel generators that can work in conjunction with the BESS and solar PV during an outage to keep the facilities operating for an extended period of time.

Figure 7. BESS at another ENGIE Project

The Senior Center and Community Center have also been sized with BESS that can handle the site's demand profile to provide community resource centers during an outage. ENGIE also proposes the installation of a 100kW natural gas generator at each of these sites to provide an additional level of protection from outages. The BESS microgrid systems will provide resilient backup to benefit the city throughout any upcoming power outages.

The Sports Center poses a challenge with its existing Power Purchase Agreement (PPA) solar system. Without the load profile of the existing solar, ENGIE estimated the battery size using only the residual utility load, but this is not a complete picture of how the site utilizes electricity. Additionally, for a reliable and fully functioning microgrid, the resiliency controls must be able to curtail solar production to ensure continuous operation. Without these controls, if at any time during an outage the existing solar production exceeds the load that can be used by the site and battery combined, the battery would automatically trip, subsequently causing the PPA solar to trip as well and the site to lose power. To prevent this, the microgrid must be able to "tune down" solar production as needed, which cannot be accomplished with the older inverters installed as part of the PPA. Starting in 2021, the City would have the option to buyout

their solar PPA (more information on that in section 5 of the CEA), but before this happens, any modifications are not an option since the City does not own the system. If the City decides to buy it out, ENGIE could investigate the most cost-effective way to integrate controls to the existing system. Currently, ENGIE is unable to fully engineer and price this system due to all these unknowns, but preliminary sizing and savings are provided for the City's consideration.

Lastly, Fire Station No. 1 was evaluated for a BESS that can handle the site's demand profile and work in conjunction with its existing diesel generator to extend the site's critical operations during an outage, but without on site solar (due to sizing and shading constraints), this would not be as sustainable as the other microgrid options proposed.

The BESS controller monitors for facility load at the utility revenue meter through CT measurements on a second-by-second basis and communicates with the BESS to charge and discharge in response to offset peak demands and capitalize on Time-of-Use (TOU) energy cost differences. The BESS is used to reduce the highest demand peaks and peaks occurring during the highest cost periods encountered during a given billing cycle.

Table 8 below summarizes the BESS systems proposed for the City of Milpitas. These provide increased safety, security, and peace of mind with increased resiliency for the community and the City of Milpitas.

Table 7. ECM 2 BESS Summary

Site	System Size (kW)	Approximate System Duration (hours)	Projected Annual Cost Savings
Police Department/ Public Works	375	2	$14,049
City Hall	375	2	$8.028
Community Center	125	2	$250
Senior Center	125	2	$375
Sports Center	250	2	$8,697
Fire Station 1	125	2	$6,133
TOTAL	**1,375**		**$37,532**

Based on conversations with City staff, ENGIE recommends BESS for the Senior Center and Community Center as part of Bundle C1. The BESS for Public Works is recommended as part of Bundle C2. These systems meet a critical need of resiliency for the City, and total costs for these three systems are estimated at $4.69MM.

3.3. ECM 3: Transformer Upgrades

The scope of this ECM is to replace old, inefficient transformers with new, ultra-high efficiency transformers. While all facilities are unique, the electrical infrastructure is most likely based on industry standard transformers, typical of most facilities across the United States. Replacing the old, inefficient

transformers with state-of-the-art transformers yields substantial energy savings and renews a key component of the infrastructure that powers all connected equipment.

Low-voltage (<600 volts) electrical distribution transformers, which are located throughout the City of Milpitas facilities, play a key role in delivering electrical power to the building systems. Transformers are continuously powered in order to ensure that the equipment served by them has power available (whether they are turned on or not), consuming energy 24 hours per day, 7 days per week.

High efficiency transformers set new benchmarks for environmental protection, energy efficiency and reliability. Designed to provide the lowest life cycle cost, the high efficiency transformers go beyond the efficiency of standard off-the-shelf transformers, ensuring lower operating losses, providing superior performance, and reducing environmental impact. High efficiency transformer technology has proven to reduce electric losses and associated operating costs by approximately 60-80% compared to existing older inefficient transformers. This consequently reduces power drawn from generating stations resulting in less pollution and lower greenhouse gas emissions.

High efficiency transformers are designed and manufactured to fit within the existing footprint or constraints and are provided with custom lug termination configurations. They also have an environmental advantage in that they are produced with less manufacturing waste and also reduce hazardous materials. Custom design and manufacturing allow for faster installation, lowering labor costs. Additionally, high efficiency transformers' long life and dependable performance is backed up with an up to 32-year warranty from the manufacturer.

Working or learning environments can be degraded or disrupted when noisy transformers are located close to people. High efficiency transformers have embedded structural and acoustic treatments that combine to reduce ambient noise generated by the transformer.

A majority of today's building connected load is electronic in nature, indicating a need for transformers that are K-rated and UL-Listed per code. Replacing older inefficient distribution transformers with energy efficient transformers can also help bring existing code deficient distribution transformers up to code.

Total costs are estimated at $0.33MM with a simple payback of 14 years.

3.3.1. Transformer Replacement Benefits

- Expected loss reduction is 75% on average
- Decades of embedded energy savings without the need for upgrades, control systems, or building occupant behavior change
- Additional reduction in local air-conditioning load due to reduction in excessive heat from transformer energy losses
- Environmental benefits including greenhouse gas reduction
- Improved environment with noise reduction
- Removal of the end-of-life risk associated with the current old existing transformers
- An updated electrical foundation optimized for modern electronic equipment and loading conditions delivering both lower losses and higher power quality

Table 8. Transformer Replacement Summary

Site	Transformer Quantity	Projected kW Reduction	Projected Annual kWh Savings	Projected Annual Cost Savings
City Hall	5	5.42	47,403	$9,447
Public Works, Police Department	5	5.92	51,839	$8,607
Milpitas Sports Center	1	1.57	13,714	$5,056
TOTAL	**11**	**12.90**	**112,956**	**$23,110**

3.4. ECM 4: Electric Vehicle Charging

The City of Milpitas already has several electric vehicle (EV) charging stations installed at sites like City Hall and the Library Garage. As the costs of electric vehicles have decreased and the number of electric vehicles on the road has increased, the demand for EV charging stations accessible to City staff and the public has increased. To meet this demand and encourage the use of electric vehicles throughout the Bay Area, we recommended the installation of additional EV charging stations throughout the City.

Our scope proposes adding a total of eight dual port Level 2 charging stations plus 1 DC Fast Charger throughout the City, at the locations shown in Table 10 below. Bundle C1 includes the EV chargers at the Senior Center, and C2 includes the EV Chargers at City Hall, Public Works, and the Sports Center.

Table 9. EV Charging Summary

Site	Dual Port Level 2 Charging Stations	Single DC Fast Charging Station
City Hall	2	0
Senior Center	2	0
Public Works	2	0
Milpitas Sports Center	2	1
TOTAL	**8**	**1**

The eight dual-port, level-2 (high) charging stations are capable of an electrical output of 7.2 kW that can charge any type of electric vehicle. This provides the capacity for up to 16 concurrent charges across the four locations. Typical charging time is 3-4 hours per vehicle. The quantity per site was selected based on feedback from City staff.

The one DC Fast Charger was recommended by City staff to be added to the Milpitas Sports Center. The DC Fast Charger has a 62.5kW output that enables a typical electric car to be fully charged in 30 minutes rather than the 3-4 hours that is required for Level 2 charging.

This measure takes advantage of the new solar carports being proposed at City parking lots, coordinating the electrical conduit work required by both scopes to reduce costs when interconnecting the new charging stations into the existing electrical service at each site. Installation of the EV charging stations would also include commissioning, a 5-year software agreement with the provider, and a warranty program.

While EV charging stations increase the site's electricity consumption and demand, rather than reducing it, they encourage the use of electric vehicles and a reduction in GHG emissions and pollution throughout the City. The CEA analysis does not include any revenue streams from EV chargers.

Total implementation costs are estimated at $0.47 MM, and no payback is calculated due to there being no direct associated savings.

3.4.1. EV Charging Benefits

- Environmental stewardship

- Positive public recognition
- Encouraging City staff and residents to use electric vehicles

3.5. ECM 5: Facilities Lighting Upgrades

ENGIE has investigated the use of LED lighting technology for a variety of lighting applications. With the advancement of this technology, there is an opportunity to utilize LED lighting for office spaces, conference rooms, warehouses, multi-purpose rooms, exercise areas, pumping stations, parking lots, and other locations within City facilities for a comprehensive lighting upgrade. LED replacements will make an immediate difference and will be noticed with improved light coverage, light quality, efficiency, longevity, color rendering, nighttime safety, energy savings, and maintenance savings.

In addition to the main sites listed in the ECM Matrix (Table 1 of this report), facility lighting upgrades are also included for the pump stations shown below. Sunnyhills Turnout, Calaveras Turnout, and Main Street Turnout pumping stations do not have any lighting.

Table 10. Pumping Stations Included in Lighting Retrofits

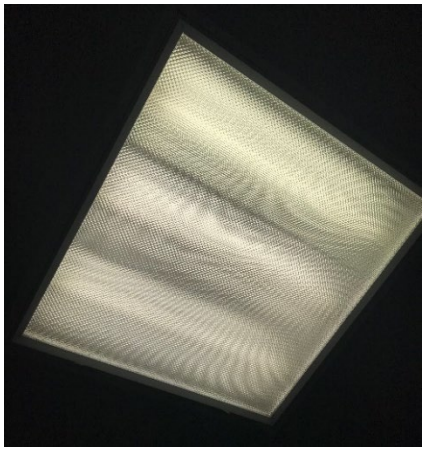
Site	Address
Jurgens Storm Pump Station	345 Jurgens Drive
Spence Creek Storm Pump Station	11 Butler Street
Penitencia Storm Pump Station	944 La Honda Drive
Milpitas Materials Storm Pump Station	1125 N. Milpitas Blvd
Abbott Storm Pump Station	1225 N. Abbott
California Circle Storm Pump Station	1735 California Circle
Berryessa Storm Pump Station	731 Folsom Circle
Murphy Ranch Storm Pump Station	801 Murphy Ranch Road
Bellew Storm Pump Station	481 Murphy Ranch Road
Oak Creek Storm Pump Station	1521 McCarthy Blvd
PD Sump Storm Pump Station	1275 N. Milpitas Blvd
Wrigley Ford Storm Pump Station	75 Marylinn Drive
Manor Storm Pump Station	349 Marylinn Drive
McCarthy Storm Pump Station	1001 N. McCarthy Blvd
Main Sewer Pump Station	1425 N. McCarthy Blvd
Venus Way Sewer Pump Station	1085 Venus Way
Gibraltar Turnout (2 adjacent) + G Reservoir	641 Gibraltar Court
Ayer Reservoirs	1429 E. Calaveras Blvd
Tularcitos Pump Station	1200 Tularcitos Drive
Country Club Station	1437 Country Club Drive
Minnis Tank	Launch Site Road

3.5.1. Interior LED Lighting Description

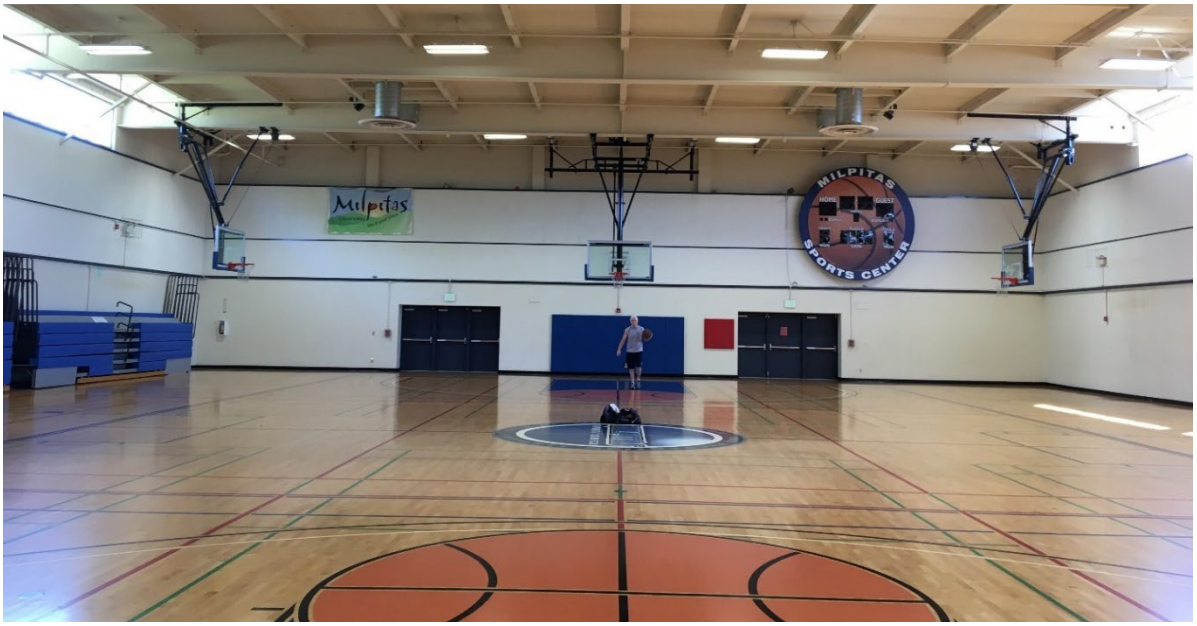
A detailed audit of City facilities revealed that the majority of the interior lighting consists of older generation 32-Watt T8 linear fluorescent lamps (with some older 34-Watt T12 linear fluorescents also present), recessed-can fixtures with screw-in and plug-in compact fluorescent and incandescent lamps of various wattages. Several T5 linear fluorescent fixtures were also present in the Milpitas City Hall, Community Center, Senior Center, Public Works, and Sports Center. Lighting technologies across facilities have been slowly upgraded over time, but there is still great potential to minimize consumption and maximize savings.

City Hall

Public Works/Police Department



Sports Center



The current interior T8 and T12 lighting applications have an estimated life of 20,000 to 24,000 hours. They are outdated and not very cost effective, with continuous intensive lamp maintenance, whereas LEDs will provide a life expectancy of 50,000 to 100,000 hours and up to a 10-year warranty depending on manufacturers. LED fixtures also have an environmental advantage in that they contain no mercury, produce less waste, and are made from fully recyclable materials.

The full site audit determined exact quantity and type of light fixtures across City facilities, as well as the appropriate retrofit for each scenario. Options ranged from simple tube replacements, to retrofit kits, and all the way to entirely new fixtures. ENGIE evaluated the application and cost effectiveness of each option, deciding along with City staff the best solution for specific areas. In general, ENGIE proposes converting all existing lighting to LEDs on a one-for-one basis, reusing existing structural attachments as appropriate. A few exceptions are not getting retrofits, in instances where there may not be viable LED solutions (for example, certain decorative sconces) or where LEDs are not the appropriate technology for the specific application (for example, stove top hoods which give out a lot of heat). ENGIE can also provide photometric analyses of select representative areas on an as-needed basis.

Replacing older lamp technology with LED technology will yield an average of approximately 50% energy savings, while significantly increasing the average lamp life and reducing maintenance costs associated with lamp replacement.

Additionally, LEDs have the advantage of minimal lumen depreciation, better optical efficiency, and high lumens per watt. LEDs are instant on and instant off so there is essentially no re-strike period.

3.5.2. Interior Lighting Efficiency Benefits

- Increased energy savings
- Environmental stewardship
- Improved light quality for interior spaces
- Improved lighting system reliability
- Reduced cooling needs due to lower thermal impact of LED lamps
- Reduced maintenance costs
- Reduced lamp and ballast stock requirements
- Reduced manufacturer component redundancy
- Reduced GHG emissions

3.5.3. Lighting Controls Description

ENGIE will also install control systems necessary to meet CA Title 24 energy codes and further energy savings, while also maintaining or increasing lighting functionality. Interior fixtures are currently primarily controlled by manual switches, with limited use of occupancy sensors for automatic shut-off of selected areas.

In most cases, the control strategy will include automatic operation of the lighting, considering the needs of the space's occupants as well as what is necessary to comply with mandatory energy codes. Control technologies usually refer to the type of device that will be used to carry out a specific strategy and what method the device will use to operate (passive infrared, ultrasonic or dual technology sensors, timers, daylighting controllers or lighting control panels).

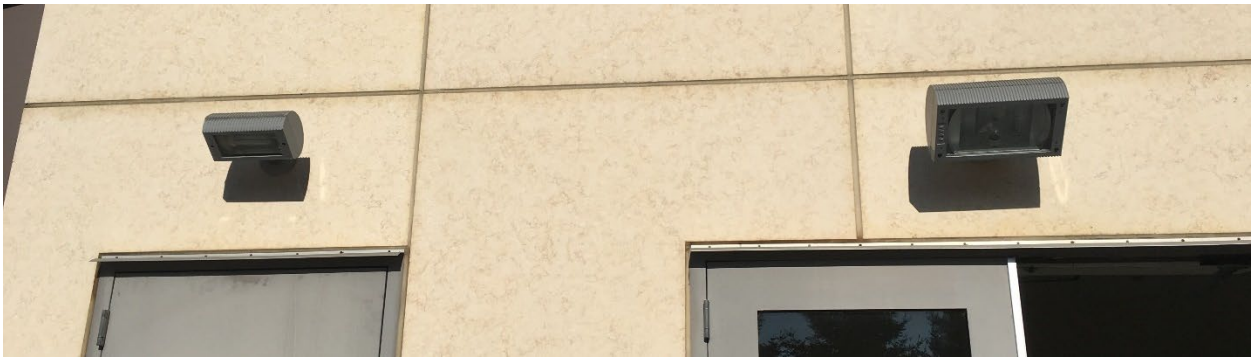
Some City locations already use interior occupancy controls, but many high use spaces currently lack lighting controls. To meet Title 24 requirements and reduce energy usage, as well as ensure that existing lighting functionality is maintained post-retrofit, the following will be installed as required in each office space, conference room, restroom, multipurpose room, exercise room, and other areas as applicable:

- **Occupancy Controls:** Switching lighting off and on in response to the occupancy of a space
- **Dimming Controls:** Continuously adjusting lighting levels to achieve desired lighting effects or appropriate light levels for different occupant activities

3.5.4. Exterior LED Lighting Description

A detailed audit of selected City facilities revealed that the majority of the City's exterior fixtures consist of floods, wall packs, and canopy fixtures with metal halide, high pressure sodium, and CFL lamps around building perimeters, pathways, and general area lighting. The City also has several high intensity discharge pole-mounted fixtures in parking lots and driveways. Upgrading exterior lights with LED lighting will save energy, significantly increase lamp life, and reduce maintenance.

City Hall



Public Works/Police Department

The current exterior HID lighting applications have an estimated life of 20,000 hours. They are outdated and not very cost effective, with continuous intensive lamp maintenance, whereas LEDs will provide a life expectancy of 50,000 to 100,000 hours and up to a 10-year warranty depending on manufacturers. LED fixtures also have an environmental advantage in that they contain no mercury, produce less waste, and are made from fully recyclable materials. Additionally, LEDs have the advantage of minimal lumen depreciation, better optical efficiency, and high lumens per watt. LEDs are instant on and instant off so there is essentially no re-strike period.

A full site audit determined exact quantity and type of exterior light fixtures across City facilities, as well as the appropriate retrofit for each scenario. ENGIE evaluated the application and cost effectiveness of each option, deciding along with City staff the best options for specific areas. In general, ENGIE proposes converting all existing lighting to LEDs on a one-for-one basis, reusing existing structural attachments as appropriate. The only exceptions are lamps for which there are no viable LED solutions, and therefore no retrofit is proposed.

Exterior fixtures are mainly controlled by a photo sensor or digital timer. Further reduction in demand and operating hours can be achieved with integrated adaptive lighting controls that allow for lower light output after an area is unoccupied – when full brightness is no longer necessary. This "bi-level" strategy will also aid evening security with better light quality and alert personnel to areas that are turned on to full brightness in response to movement. Bi-level will also be installed as required to meet CA Title 24 energy codes.

3.5.5. Exterior Lighting Efficiency Benefits

- Increased energy savings
- Improved light quality for exterior spaces
- Improved safety of exterior areas
- Improved lighting system reliability
- Reduced maintenance cost
- Reduced lamp and ballast stock requirements
- Reduced manufacturer component redundancy
- Reduced GHG emissions

Table 12 summarizes the estimated savings and costs for the interior lighting efficiency upgrades proposed. These estimates were created using ENGIE's experience, based on the buildings' square footage and annual electricity usage, as well as data from similar, recent projects. Total costs for interior and exterior facilities lighting are estimated at $1.88MM with a simple payback period of 6 years.

Table 11. Interior and Exterior Facility Lighting Summary

Site	Projected Annual kWh Savings	Projected Annual Cost Savings	Projected Annual O&M Savings
Main Buildings	1,061,318	$224,335	$77,025
Pumping Stations	76,031	$15,605	$3,371
Total	**1,137,349**	**$239,940**	**$80,396**

3.6. ECM 6: Streetlighting Upgrades

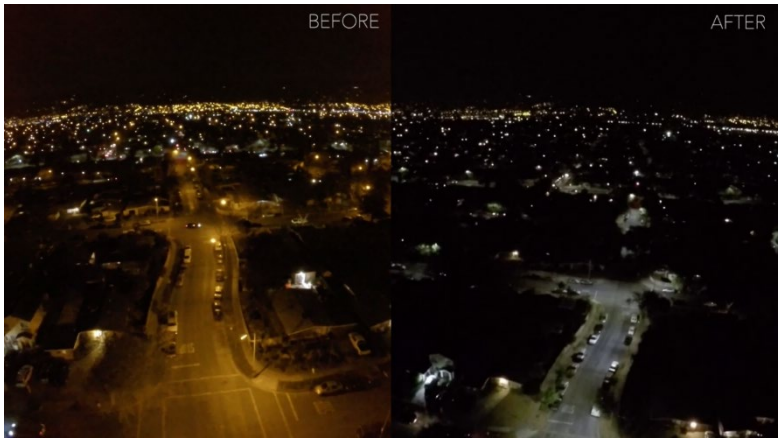
Streetlights are typically broken into two groups: City owned streetlights and PG&E owned streetlights. The City owned streetlights are billed under the LS-2 (unmetered) or LS-3 (metered) PG&E rate tariffs. The City is responsible for operation and maintenance of these streetlights. The PG&E owned streetlights are billed under the LS-1 PG&E rate tariff, and PG&E is responsible for their operation and maintenance. The City of Milpitas has 93 PG&E owned streetlights and 4,362 City-owned streetlights (all unmetered and billed under LS-2).

The City can upgrade the LS-2 streetlights from HID fixtures to LED fixtures at their discretion. For the LS-1 streetlights, the City can request that PG&E perform a savings study on the upgrade of LS-1 streetlights from HID fixtures to LED fixtures.

3.6.1. Streetlighting Efficiency Benefits

- Increased energy savings
- Improved light quality and safety for streets, roadways, and neighborhoods
- Improved lighting system reliability
- Reduced maintenance cost
- Reduced lamp and ballast stock requirements
- Reduced manufacturer component redundancy
- Reduced GHG emissions

Figure 8. ENGIE Streetlight Retrofit for City of San Jose



The City of Milpitas has already replaced a significant portion of their streetlights to LEDs. ENGIE analyzed the City's BRIO report and based on information from the City staff, performed a detailed audit of the remaining 1,700 streetlights not yet in the process of being upgraded by the City. The remaining City streetlights were found to be primarily a mix of 100, 150, 200, 250, and 400-watt fixtures, and include 257 decorative acorn lights.

ENGIE proposes to upgrade all remaining 1,700 HID streetlights to LED fixtures, and can also provide the labor to install 485 LED fixtures already owned by the City but not yet installed. This will achieve energy savings, improve light coverage, and help standardize on streetlight technology throughout the City, as these are brought up to match the over 2,200 fixtures already converted to LEDs.

ENGIE performed a study of current streetlighting vendors on the market (looking at their performance, reliability, warranty terms, pricing, and past project experience), and worked with the City of Milpitas on any preferred manufacturers. Based on City staff input, since the City already has a wide variety of LED brands and models installed, the scope includes the most cost-effective LED options available, but uses the same color temperature as the existing City LEDs for consistency (4,000K).

Additionally, ENGIE worked with City staff to evaluate specific needs and priorities for streetlighting controls, leveraging our worldwide expertise to determine the best solutions for City of Milpitas. Many smart lighting options exist, and after discussions with City staff, ENGIE is proposing cellular controls that will enable the City to view all their streetlights in an online dashboard, increasing awareness of any outages and their ability to quickly replace those for the community.

LS-1 (PG&E-owned streetlights) Scope of Work

- ENGIE has requested PG&E to provide a savings analysis on the conversion of the existing HID fixtures to LED fixtures
- PG&E confirmed that out of their 93 LS-1 fixtures, most have already been replaced with LEDs
- Fewer than 18 fixtures are not yet converted. Those are located in hard to access places, and will be retrofitted to LED as the existing fixtures fail over the next few years
- No additional work is required from the City of ENGIE regarding these fixtures

LS-2 (City-owned streetlights) Scope of Work

- ENGIE has completed an audit of the remaining fixtures, specifying retrofits for each situation as appropriate
- ENGIE will complete final engineering and prepare submittals and specifications
- ENGIE will remove and replace existing HID fixtures to LED fixtures
- ENGIE will dispose of old lamps and ballasts per EPA, or other state and local regulations; the City can be provided documentation (manifest etc.) of proper disposal as needed

Streetlighting Controls Scope of Work

- ENGIE will install streetlighting controls at all 4,455 City of Milpitas streetlights
- While visiting all poles, ENGIE will compile an updated detailed audit for all City streetlights

Table 13 below summarizes the projected savings associated with this measure. Total costs are estimated at $2.95 MM, with a simple payback period of 8 years.

Table 12. Streetlighting Retrofit and Controls Summary

Description	Projected Annual kWh Savings	Projected Annual Cost Savings	Projected Annual O&M Savings
City-wide Streetlighting Retrofits and Controls	1,771,359	$324,318	$52,125

3.7. ECM 7: Sports Lighting Upgrades

The City of Milpitas has multiple locations with sports lighting which might be good candidates for LED upgrades. LED lighting has several functionality advantages for sports lighting:

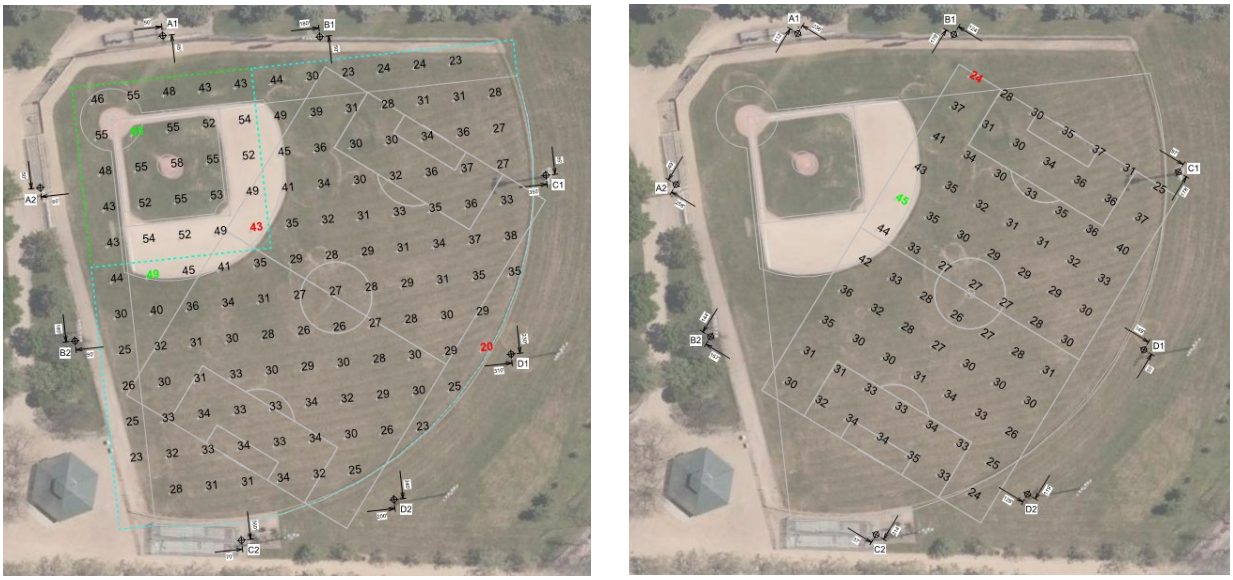
3.7.1. Sports Lighting Upgrade Benefits

- Significant energy savings
- Significant maintenance savings, since the fixtures last much longer, reducing the need for expensive repairs/replacements at heights of up to 80'
- Fixtures reach full illumination almost immediately after being powered on
- LED sports lighting can be brightened or dimmed
- LED sports lighting can create near-perfect lighting uniformity across a playing surface, thus eliminating shadows or dark spots
- LED sports lighting can be remotely controlled for scheduled practices/games or automatic shut-off at preset times

Based on conversations with City staff, ENGIE evaluated sports lighting upgrades to LED fixtures (optimizing pole distribution and height as needed) at the Cardoza Park baseball field and softball field as well as the soccer field at Hall Memorial Park. In addition, ENGIE evaluated adding new LED sports lighting to Dixon Landing Park to encourage future expanded use of its sports fields. These fields and parks were selected in conjunction with City staff, prioritizing high-usage spaces, bypassing fields with already recent retrofits, and prioritizing new lighting where most beneficial for residents and City sports programs.

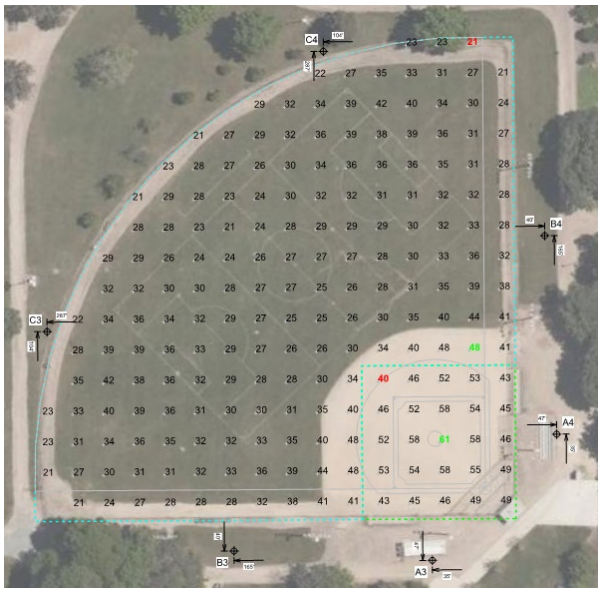
Our analysis shows that the baseball field at Cardoza Park is a great candidate for LED retrofits. There are significant energy savings to be achieved from retrofitting these lights to LEDs due to the extended hours of use, and the existing poles are all in good condition. This baseball field also has an overlaying soccer field which gets heavily used. Since the City is currently using Musco sports lighting equipment, ENGIE worked with Musco to obtain a recommended design (with the photometrics shown below).

Figure 9. Photometrics of Cardoza Park Baseball and Overlaying Soccer Fields



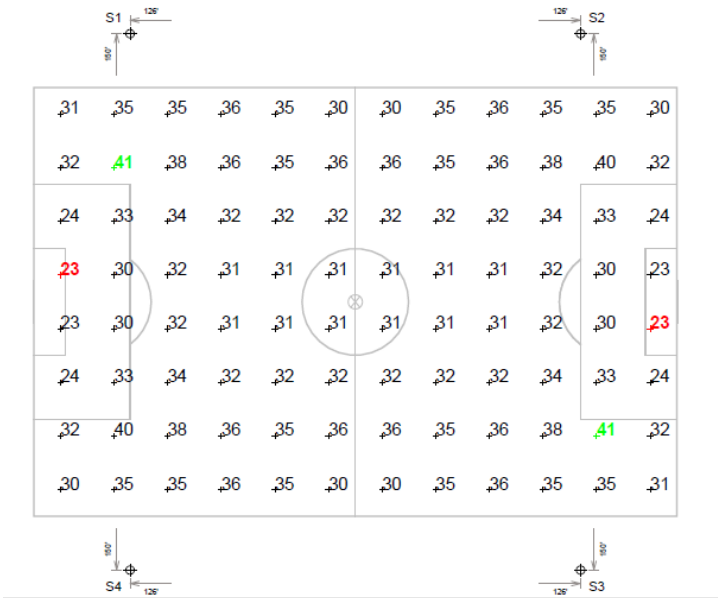
ENGIE also evaluated the Cardoza Park softball field for upgrades. Since the existing poles are quite short, in order to provide a good LED retrofit ENGIE is recommending that those be replaced with taller poles to properly distribute the light across the field. This field still has good energy savings associated with the retrofit.

Figure 10. Photometrics of Cardoza Park Softball Field



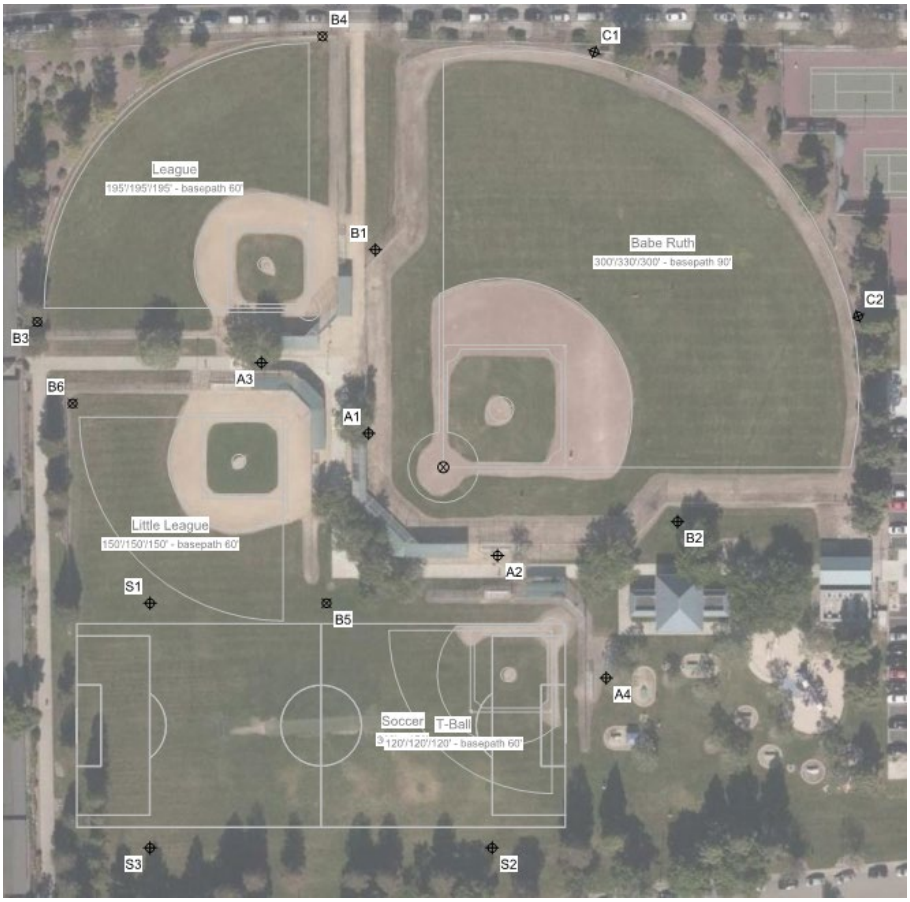
The soccer field at Hall Memorial Park was also evaluated for an LED lighting replacement. Since the park has such few existing fixtures, a proper LED retrofit would actually consume a little more energy than the existing baseline, but would still provide significantly better lighting for the field and its users. Hours of operation are not currently very high, but the City expects an increase in the near future due to potential shifts in sports programs and used spaces. Additionally, the existing 8 poles are quite short, so for better light distribution, ENGIE is recommending that they be removed and replaced with 4 taller poles.

Figure 11. Photometrics of Hall Memorial Park



The City also requested that an evaluation be completed to add new sports lighting to all Dixon Landing Park fields. Since this would be an addition, there are no associated energy savings, but the installation of LED sports lighting would dramatically improve visibility and offer opportunity for increased sports usage of the park in the years ahead, benefitting the citizens of Milpitas. Due to the nature of adding new lights where none exists, this is by far the most comprehensive sports lighting scope, including electrical upgrades to the site to account for the new consumption. Additionally, a full Environmental Impact Report would need to be completed, to identify and examine the likely environmental effects of this proposed project, outlining measures to avoid, mitigate, or offset them. This process is expected to take multiple months in design and discussion, and installation would be consequently delayed. Because of this, we are not currently including LED sports lighting at Dixon Landing as part of our recommended Bundle B. Figure 12 below shows the layout of proposed pole locations to illuminate all Dixon Landing Park sports fields.

Figure 12. Layout of Proposed Pole Locations for Dixon Landing Park



Total costs for the requested bundle (which excludes Dixon Landing Park) is estimated at $1.55MM.

Table 14 below summarizes the sporting lighting scopes identified, with projected energy and maintenance savings.

Table 13. Sports Lighting Summary

Site	Projected Annual kWh Savings	Projected Annual Cost Savings	Projected Annual O&M Savings
Cardoza Park Baseball Field	43,021	$10,025	$1,500
Cardoza Park Softball Field	6,550	$1,602	$725
Hall Memorial Park Soccer Field	0	$0	$400
Dixon Landing Park (new)	0	$0	$0
Total	**49,571**	**$11,627**	**$2,625**

3.8. ECM 8: Park Lighting Upgrades

ENGIE audited all 35 City of Milpitas parks for potential lighting upgrades, and fully evaluated this scope for the 28 parks that have existing lighting. This is detailed in the table below.

Table 14. Park Lighting Summary

Park Name	Address	Lighting (Yes/ No)
Augustine Memorial Park	Cortex and Coelho off Escuela	Yes
Ben Rogers Park	Grand Teton at Sequoia	Yes
Calle Oriente Mini-Park	Calle Oriente off North Park Victoria	Yes
Cardoza Park	Kennedy Drive at North Park Victoria	Yes
Cerano Park	SanDisk and Murphy Ranch	Yes
Creighton Park	Olympic west of South park Victoria	No
Dixon Landing Park	Dixon Landing and Milmont	Yes
Foothill Park	Roswell Drive at Roswell Court	Yes
Gill Memorial Park	Paseo Refugio and Santa Rita	Yes
Hall Memorial Park	LaHonda and Coyote	Yes
Hidden Lake Park	N. Milpitas Blvd between Escuela Pkwy and Jacklin Rd	Yes
Higuera Adobe Park	Wessex off N Park Victoria	Yes
Hillcrest Park	Fieldcrest off Crescent	Yes
Murphy Park	Yellowstone east of S. Park Victoria	Yes
Pinewood Park	Lonetree and Starlite Drive	Yes
Sandalwood Park	Escuela Pkwy and Russell	Yes
Selwyn Park	Selwyn Drive off Dempsey Rd	Yes
Sinnott Park	Clear Lake and Tahoe	Yes
Starlite Park	Rudyard and Abbott Ave.	Yes
Strickroth Park	Martil and Gemma off east Tramway	Yes
Jones Memorial Park	Jacklin at Hillview	Yes
Robert E. Browne Park	Yellowstone east of S. Park Victoria	Yes
Dog Park at Ed Levin	3100 Calaveras Rd, Milpitas	No

Park Name	Address	Lighting (Yes/ No)
Pecot Park	Dixon Landing, west of Conway	No
Parc Metro East Park	Parc Metro, Curtis, east of main St	Yes
Parc Metro Central Park	Parc Metro, Curtis, east of main St	Yes
Parc Metro West Park	Parc Metro, Curtis, east of main St	Yes
Alviso Adobe	Calaveras, east of Piedmont	Yes
Tom Evatt Park	Abel St and Machado St	Yes
John McDermott Park	Alvarez Court, off Abel St	Yes
O'Toole Elms Park	Abel St, north of Curtis St	Yes
Calaveras Ridge Park	Calaveras Ridge Drive	No
Bob McGuire Park	Garden St, between S. Milpitas Blvd and Piper Drive	No
Augustus Rathbone	Expedition Lane and Jubilee Drive	No
McCandless Park	1700 block McCandless Drive	No

Given the improvements in efficiency of LED light fixtures and the decrease in costs over the last few years, LEDs have become a very cost-effective replacement for conventional lighting that will save the City over 50% in energy savings. Added bi-level controls both help meet Title 24 requirements and increase savings for fixtures when no one is present. In addition, the brighter, more uniform light enhances park security. Furthermore, LED service life of 15 to 20 years means drastically reduced maintenance requirements.

Dixon Landing Park

Pinewood Park

3.8.1. Park Lighting Efficiency Benefits

- Increased energy savings
- Improved light quality for park areas
- Improved safety of park areas
- Improved lighting system reliability
- Reduced maintenance cost
- Reduced lamp and ballast stock requirements
- Reduced manufacturer component redundancy
- Reduced GHG emissions

Total savings from LED fixture conversions at all 28 City parks would yield in a reduction of 61% of the baseline lighting consumption. Full savings are summarized in the table below. Costs for this measure are estimated at $0.49MM, with a simple payback of 10 years.

Table 15. Park Lighting Summary

Description	Projected Annual kWh Savings	Projected Annual Cost Savings	Projected Annual O&M Savings
City-wide Park Lighting Retrofits	151,312	$38,201	$7,729

3.9. ECM 9: HVAC Upgrades

ENGIE found that the City of Milpitas has a significant amount of air conditioning equipment that is being operated past its useful life. This results in less than optimal working environments for staff and residents, high maintenance costs, high running costs, and an overwhelmed facilities department. By leveraging savings from other ECMs, ENGIE proposes to upgrade equipment identified by City staff as most in need of replacement and most likely to fail in the short-term.

City Hall

Police Department/Public Works

ENGIE has reviewed the HVAC inventory list that was provided by the City and conducted a full audit of all units, wherein we verified and documented all equipment, nameplate information, scheduling, zoning, set point, and control sequences. We then prioritized replacements based on unit age and conditions, as well as feedback from City staff. Replacement of old and outdated HVAC equipment provides energy savings due to improved efficiency and technology and reduces maintenance costs due to increased reliability and functionality. The following scope has been identified for replacements:

Table 16. HVAC Upgrades

Site	Condensing Unit & Heat Pump	Rooftop Packaged Unit	Condensing Unit & Coil	Furnace	Ductless Split System	Make-up Air Unit	Gas Heater	General HVAC Maintenance	Exhaust Fan	Cooling Tower	Water Heater	Water Pump	Unit Heater	Air Compressor	Variable Frequency Drive	TOTAL
Corp Yard		3							1					1		**5**
Police Department/ Public Works			1					10		2		1		1	3	**18**
Community Center		2							3		1					**6**
Sports Center		12				1	1									**14**
City Hall	6							2				3				**11**
Senior Center											2					**2**
Fire Station No. 1			5	5	1				6							**17**
Fire Station No. 3			1	2									1			**4**
Fire Station No. 4			1	1									2			**4**
Dixon Landing Park											1					**1**
TOTAL	**6**	**17**	**8**	**9**	**1**	**1**	**1**	**12**	**10**	**2**	**4**	**4**	**3**	**2**	**3**	**82**

The new replacement units will be primarily selected based on capacity of the existing units and ability to match the existing installed location including physical size and ductwork configuration. Due to some configurations, the efficiency selections may be limited. Rooftop packaged HVAC units will include economizers as required. The scope of work will include reuse of existing equipment mountings, vibrations isolation, electrical connections, and other equipment where feasible.

Custom air handlers and other custom HVAC equipment are not recommended for upgrade, since a newer version would have a larger footprint and weigh more, creating issues within the physical space available and structural capacities of the existing buildings. They are instead recommended for retro-commissioning, with inspection and upgrade of any key components to ensure they are operating at top efficiency.

The cooling tower at Public Works is also past its useful life and currently has leaking problems. After researching current equipment available in the market, due to the limited footprint of the existing space, ENGIE is recommending that the two existing side-by-side cooling towers be replaced with a single, larger one.

ENGIE is vendor agnostic and will work with whatever manufacturers the City prefers. As needed, ENGIE will leverage our expertise to help select the best-fit solutions, recommending specific products based on cost and performance.

Additionally, for the Community Center, the City of Milpitas requested that ENGIE evaluate replacing and elevating the ductwork associated with the two packaged units up for replacement, since it is past its useful life. Due to the extensive costs and no associated savings, this ductwork replacement is not included in the proposed bundle.

3.9.1. HVAC Upgrade Benefits

- Improved working environment through improved comfort in occupant spaces via new equipment and better controls
- Energy savings through newer, more efficient units and better controls
- Reduced equipment down-time and maintenance needs
- Remote monitoring of equipment's operation set points

The table below summarizes projected savings associated with the proposed HVAC upgrades for the City of Milpitas. Everything but ductwork improvements for the Community Center are included in the proposed bundle, totaling an estimated $2.18MM in costs with a simple payback of 25 years.

Table 17. HVAC Savings Summary

Description	Projected kWh Savings	Projected Annual Cost Savings	Projected Annual O&M Savings
HVAC Upgrades	21,982	$5,754	$81,930

3.10. ECM 10: EMS Upgrades

The Energy Management System (EMS) at City Hall has previously been upgraded and works efficiently, while the EMS system at the Public Works Complex has not been very effective. This CEA evaluated installing the same effective EMS system at Public Works that has been successful at City Hall. The Public Works Building would receive the same Automated Logic brand DDC/BMS as currently exists in City Hall and it would have DDC controllers for mechanical equipment including air handler units, chiller units, the cooling tower, and air conditioners. This would effectively leverage the existing successes for the City Hall EMS and facilitate maintenance for City staff.

The existing EMS at the Public Works Complex is a Johnson Controls METESYS, with numerous control panels located throughout the facility. These control panels allow the units to communicate back to a central controller, with access to the facilities engineers. This system plays a critical role in maintaining proper equipment operation, troubleshooting, and overall maintenance of the existing equipment. However, this has not been a fully-functioning system. City staff reported several communication issues between the controllers and the equipment, resulting in the equipment operating in manual mode or with non-optimal settings.

At Public Works, ENGIE proposes to replace the current EMS with the above noted Automated Logic DDC/BMS to ensure proper operation of the mechanical equipment. Control panel upgrades are the first step in the proper control of the conditioned spaces. Once high-level communication and controls are set up, the existing equipment would be recommissioned and sensors and points upgraded and calibrated to ensure office and other occupied spaces are operating within predesigned set points.

When the Public Works Building receives the new Automated Logic DDC EMS system installed, both the City Hall Building and the Public Works/ Police Department Building will be integrated to the same control web platform. Those systems can then be controlled from a central point and key control variables will be visible and remotely adjustable for the responsible facilities engineers. This provides increased control ability and understanding, but also allows settings to be quickly and accurately adjusted in case any alarms are triggered and the necessary troubleshooting can be fulfilled remotely. This allows for faster response times, reduced maintenance times and costs, and overall increased reliability. The actual energy savings are difficult to quantify, but the benefits are visible, and the new upgraded EMS system will provide increased reliability and resiliency for performing critical City functions at the Public Works Complex, including the Police Department.

Total costs are estimated at $0.44MM with a simple payback of 55 years.

3.10.1. EMS Upgrade Benefits

- Improved working environment
- Improved equipment control
- Remote monitoring of equipment's operation set points
- Ability to remotely troubleshoot, solve, and reset system alarms and problems
- Energy savings through better controls monitoring

Table 18. EMS Savings Summary

Description	Projected Annual kWh Savings	Projected Annual Cost Savings	Projected Annual O&M Savings
EMS Upgrades	0	$0	$8,320

3.11. ECM 11: Irrigation Controls Upgrades

The need for water conservation has become more essential for cities in California due to recent droughts. The City of Milpitas has over 30 parks with extensive irrigation needs, which ENGIE investigated to determine whether they could benefit from weather-based irrigation controller upgrades. Irrigation controls can significantly reduce excess watering for athletic fields as well as landscaping.

3.11.1. Weather-Based Irrigation Controller Upgrade Benefits

- Cellular connection and data service
- Central cloud-based management system
- Weather-based scheduling engines
- Evapotranspiration (ET) controls
- Leak detection and automatic shutoff, with associated maintenance savings
- Water savings from reducing unnecessary watering

ENGIE audited Milpitas' parks, inspecting existing local and centralized controls, while also performing a data analysis of their water usage per acreage watered, evaluating the City's baseline compared to industry standards. The City parks were found to use low amounts of water, showing that the City's scheduling is already quite efficient and there is very little water wasted. Several of the City's parks are on a central RainMaster irrigation controller (located at the Public Works building), an older model with some limited weather-based capabilities. If desired, the City could explore upgraded enhancements to the unit, but at this time ENGIE is not recommending any action, since there is very little potential for water savings given the City's already efficient operations.

City staff also requested that ENGIE recommend an alternate, more user-friendly product for future consideration. Our research has shown that customers have found a high level of success using the control system from HydroPoint Data Systems and their WeatherTrak devices. This is a North Bay Area company (based in Petaluma, CA), and their products have robust capabilities and user-friendly interfaces.

3.12. ECM 12: Water Fixture Upgrades

Water conservation is important given the statewide drought and the City's commitment to sustainability. ENGIE evaluated all City water fixtures including toilets, sinks, urinals, and showerheads, at all public buildings and park restroom facilities, to investigate savings opportunities associated with lower flow equivalents.

In recognition of the COVID-19 pandemic and the new awareness it has brought regarding safety and cleanliness, touchless sensor sink faucets for lavatories and kitchens are planned, as well as touchless toilets and urinals flushing mechanisms. This will help mitigate contact contamination possibilities.

3.12.1. Water Fixture Upgrades Benefits

- Environmental stewardship
- Positive public recognition
- Significant water savings
- Energy savings associated with decreased hot water demand
- Reduced maintenance cost
- Increased fixture reliability
- Decreased contact contamination by installing touchless sensors

Cardoza Park

ENGIE conducted a full audit of the domestic water fixtures in City buildings and parks, counting each fixture and noting their condition and functionality. With this data, retrofit options were determined for the existing toilet and sink valves, as well as all other sources of water usage. Lower flow fixtures reduce water usage and water costs and can also lead to reductions in electric usage due to the reduced hot water demands. These retrofits would also reduce operation and maintenance (O&M) requirements by reducing the needs for staff repairs throughout the year given the newer and more reliable fixtures.

Table 20 below summarizes projected water and energy savings. Measure costs are estimated at $0.70MM with a simple payback of 23 years.

Table 19. Water Fixture Retrofit Summary

Description	Projected Annual Water Cost Savings	Projected Annual Thermal Cost Savings	Projected Annual O&M Savings
City-Wide Water Fixture Retrofits	$30,532	$750	$1,090

3.13. ECM 13: Water Meter Upgrades

Advanced Metering Infrastructure (AMI) consists of digital hardware and software technology, from customer meters and communication networks all the way to the service provider, allowing for continuously available remote communication of detailed measurements. The City of Milpitas has started implementing an AMI system for their water meters, working with Badger Meters to install communication gateways throughout the city and already installing over 1,000 new Badger meters with ORION SE Fixed Network transmitters.

Unaccounted for water is an important component of overall water system capital improvement planning. New water meters are significantly more accurate, allowing to City to fully recognize the revenue from all water sold to its constituents. Line losses are not directly impacted by meter replacement, but the frequency of AMI data points once new meters are installed allows for very sophisticated leak targeting and planning for subsequent pipe replacements.

3.13.1. Water Meter Upgrades Benefits

- Significant improvement in accuracy of water reporting
- Increase in revenue from previously under-reported consumption
- Significant maintenance savings from automating the meter reading process

ENGIE worked closely with City and Badger Meters staff to evaluate the work completed to date, and determine the work still needed for a City-wide system. ENGIE analyzed the existing City BEACON AMA database, which indicates that 15,590 meters still need to be upgraded to AMI.

The City presently has 36 active gateways, which propagation studies show will cover 13,625 water meters. Based on this data and the City's total meter count, ENGIE estimates that approximately 3,100 water meters will reside outside the gateways' area of coverage and will therefore require cellular connections. These are also included in the proposed scope.

Due to the magnitude of this scope, field conditions have not yet been verified for every single meter. Therefore, ENGIE expects that during construction, unforeseen conditions will come to light, requiring some additional work. This could include meter reconfiguration for new lay-lengths or adding bypass valves, meter lid replacements to allow for transmitter signal to properly communicate to gateway, or any deteriorating existing conditions that need to be fixed for a fully functioning system. To minimize out-of-pocket expenses to the City, ENGIE proposes a $250,000 allowance to be included with this scope.

Table 21 summarizes projected scope water "savings" - really, increased revenue due to the improved water meter accuracy. Total costs for this measure are estimated at $12.50MM (plus the $250,000 allowance), with a simple payback of 11 years.

Table 20. Water Meter Retrofit Summary

Description	Projected Annual Additional Water CCF Billed	Projected Annual Additional Water Revenue	Projected Annual O&M Savings
City-wide Water Meter Retrofits	101,604	$681,871	$416,000

3.14. ECM 14: SCADA, Pumping, and Automated Disinfection

The City of Milpitas is like most cities in the San Francisco Bay Area that are struggling to keep up with the growing needs of their population and simultaneously maintain their infrastructure, all while often facing shrinking budgets. Through conversations with City staff we understand that the City has long desired upgrades to their water, wastewater, and stormwater infrastructure. During this CEA, we worked closely with City staff to identify opportunities for SCADA and pumping upgrades to save energy, optimize systems, and reduce maintenance and operations costs.

3.14.1. SCADA and Pumping Upgrades Benefits

- Improved monitoring of water quality to ensure the City remains in compliance with state and other applicable standards
- Reduced electricity usage by reducing pumping needs
- New tank health monitoring equipment, which allows the city to maintain tank water quality and fire capacity without having to constantly turn over the tank water for water quality reasons
- Reduced maintenance costs by automating sampling and facilitating troubleshooting, reducing the number of required site visits

3.14.2. Water Controls & Pumping

Currently the City has localized controls installed at each of the water pumping stations and tank systems, all planned on being upgraded. The control systems currently being considered for upgrades are at Gibraltar, Ayer, Country Club, Tularcitos and Minnis stations. Each site is discussed separately since their scopes are all slightly different, after a brief overview of measures that are universal to several of the sites. Table 22 below outlines the water pumping sites being considered for upgrades in this CEA.

Table 21. Pumping Stations Included in Scope

Site	Type	Address
Gibraltar Tank & Pump Station	Water	641 Gibraltar Court
Ayer Tank & Pump Station	Water	1429 E. Calaveras Blvd
Tularcitos Tank & Pump Station	Water	1200 Tularcitos Drive
Country Club Booster Station	Water	1437 Country Club Drive
Minnis Tank	Water	Launch Site Road

3.14.3. SCADA Upgrade

The existing iFix SCADA system at Gibraltar and the other SCADA packages at the other water pumping sites are fairly old and are not scalable to meet the current city-wide needs. ENGIE performed an analysis

of current industry-leading SCADA software to determine the best fit for the City's needs. The following matrix compares the options available for City staff consideration. Based on feedback from City staff, ENGIE is proposing what we believe to be the best solution for the purposes of this CEA, but if this scope is selected to move forward, additional discussion will take place in close collaboration with City staff in order to develop and engineer a design that truly meets the City's needs.

Table 22. SCADA Options for City Consideration

Platform	# of clients per License	Number of Tags	Scalable beyond Water	Remote Access	Data Storage	Historian Redundancy	Years in Business	Level of Support (Subjective)
Inductive Automation - Ignition	Unlimited	Unlimited	Yes, scales to several different operations platforms. Suitable for Municipal environments	Platform built with remote access native support for Android and iOS	SQL Database	May require third-party software	17+	Good, has been very responsive to inquiries, suggestions, and solving problems with integration into other existing systems
Aveva - Wonderware	Depends on License, Scales on number of users	Depends on Price, Tiered	Yes, but more focused on manufacturing environment	Yes, through InTouch Access Anywhere web-based client	Wonderware Historian, compatible with SQL Server and Windows Server	Available but not synchronized; Changes must be done to each historian settings	33+	Support has been mixed and much more difficult to get help with integration with other non-Wonderware systems
Schneider Electric - ClearScada	Tiered based on the number of users	Depends on Price, Tiered	Remote operations Targeted for Water/Wastewater/Oil/Gas	Yes, remote access available but will cost based on the number of remote users; Access level is tiered	Robust tree system, databased stored in ClearScada	Native between servers; Updates/Data Sync happens when server is brought online	25+	Good support, not quite as extensive since being acquired by Schneider Electric, still relatively responsive and willing to help with integration with other PLC systems

Platform	# of clients per License	Number of Tags	Scalable beyond Water	Remote Access	Data Storage	Historian Redundancy	Years in Business	Level of Support (Subjective)
GE Systems - iFix 6.1	Multiple tiers dependent on pricing; Base level includes 3 clients and price scales up from there	Depends on Price, Tiered	Scalable but designed more for manufacturing/ single site operations; Can be adapted to multi-site operations but not structured towards multi-site operations	Yes, through remote desktop but not native access, some user configurable options for mobile devices	Proficy Historian 8.0, GE proprietary database	Available through third-party software and configuration	25+	No recent experience found; Defer to City's experience with existing iFix system
National Instruments - Lookout	Limited	Depends on Price, Tiered	Not easily scalable for multiple platforms	No integrated remote access	Local storage only, requires third-party software for full backup	Not available natively, may be available for third-party	20+	Limited as it is an older platform that is mainly used on small systems; Has limited support for integrating larger scale systems

Based on the information outlined, ENGIE is proposing the Ignition! software by Inductive Automation as a starting point for this design. This decision is based on several factors:

General Features: Ignition! is a mature and scalable platform that is centrally managed and offers real-time data acquisition, monitoring and real-time development of the Human Machine Interface (HMI). The area where Ignition! really excels is the opportunity for integration of several different subsystems that the City currently manages, while only having to pay for a single license for all of them.

Scalability: In addition to being suitable for smaller server architectures, Ignition! can also scale readily to a city-wide distributed architecture and can scale between different servers allowing distributed loads between them. This would make it an ideal transition for the City, allowing them to pull data from several different City systems into a central SCADA system without requiring users to learn various control systems.

Security: Ignition! supports modern web-based authentication strategies such as federated identity, multi-factor identification and single sign on (SSO). With Ignition! you can use central identity management, using technologies such as SAML and OpenID connect. As with all systems, the level of security is largely driven by the level of need and protocols developed by the user. Ignition! does keep pace with security developments as the industry makes changes and allows for frequent security updates.

Operator Ease of Use: Like other SCADA packages, some of the ease of use is driven by how the SCADA is arranged and programmed. By working with City staff to develop useful HMI screens and tools, Ignition! can be customized to meet the needs of the City and its operators. The system can also be modified and changed as the operations and needs of the City evolve over time.

Remote Access: Ignition! supports multiple users, via mobile platforms and custom-designed applications that can be linked to the City's SCADA platform. This would allow operators to troubleshoot an issue while offsite and would reduce the number of site visits due to unknown alarms.

Adaptability: One of the most attractive things about Ignition! is the ease with which it can adapt to the different water, wastewater, and stormwater systems. This way, all these different systems can be simultaneously monitored at a single site, multiple sites, and/or remotely. This not only improves redundancy, but in lockdown situations (such as seen with COVID-19) it can help limit contact and provide a useful tool for maintaining critical infrastructure. There is also the possibility of being able to roll the City's other infrastructure into the same platform, allowing staff to know when there is a problem with any part of their infrastructure.

ENGIE plans on engaging with City staff to verify that Ignition! is indeed the right fit for them or study the integration feasibility of any other preferred SCADA software. Once a software has been approved by City staff, ENGIE can then help determine the best way to proceed with its rollout.

3.14.4. Remote Communication & Networking

The City of Milpitas has been considering networking their water, wastewater, and stormwater stations for many years to allow better data gathering and an upgrade to a central SCADA system that can monitor the status of these stations without requiring frequent site visits. In the past, because of shrinking budgets and other constraints, the City has been unable to find the time and resources to complete this upgrade. A previous radio survey was completed for the City more than 10 years ago but since the City landscape has changed so drastically since then, ENGIE decided as part of the CEA to perform an updated radio study. This study allowed us to determine if all the City's water, wastewater, stormwater, and pressure

reducing stations would be able to use Radio Frequency (RF) communication to integrate into a SCADA network. RF Communication allows the City to operate their network without ongoing costs related to cellular or hard line DSL/Fiber/Cable internet costs.

ENGIE proposed for most sites to communicate with either Gibraltar or the Public Works main office, using those two sites as the primary relay points for data due to their height and relatively central location. As an alternate site, ENGIE also proposed using either Ayer or Tularcitos as a backup relay site if the other two sites were unable to communicate with some of the locations. During the course of the Radio survey, ENGIE and the survey company were able to determine that both the Gibraltar and Public Works office would be suitable to communicate with all of the stations in the network.

Based on the results of the survey, ENGIE will work with the City to determine which site would be designated as the primary communication site for RF communications and determine if they would like to use one site as a centralized hub or divide up the communication between the Gibraltar and the Public Works office. Having two sites to network the system might also be useful as the City grows, allowing for more resources to be added into the RF communication network. In theory, if the City eventually wanted to network other parts of their infrastructure, the RF communication network would also allow for that expansion.

3.14.5. Water Treatment and Chemical Dosing Upgrades

As part of the overall water system upgrades at each of the water tank sites, ENGIE has taken a closer look at providing a more automated chemical dosing system. Based on Milpitas' needs, ENGIE investigated a solution that could automatically dose both the water going directly to city-wide distribution (bypassing tanks), as well as the water stored in the City tanks.

3.14.6. Automated Dosing and Mixing System Benefits

- Greater control of water quality in the tanks and for system distribution
- Prevention of stratification in the water tanks
- Near instant reaction of introduced chemicals, improving water quality and reducing chemical usage
- Real-time monitoring of tank water health, allowing longer term tank storage without having nitrification or other quality issues that could otherwise occur
- Reduced need for operator intervention
- Reduced maintenance costs due to reduced labor and chemicals required

The new chemical dosing system would use Liquid Ammonium Sulfate (LAS) and a Salt Power/Hypochlorite generation system to avoid handling liquid Sodium Hypochlorite, which can be a hazard and often has more stringent storage requirements. Given the City's issues with the tablet system at Gibraltar in the past and the general lack of reliability of such systems, the power-based generation system seems like a good option. Additionally, ENGIE has identified companies with local manufacturing and support facilities in Milpitas, so getting support for the system can be very straightforward.

3.14.7. Water Stations

Gibraltar Tank Site

Gibraltar is the largest water pumping and tank site the City of Milpitas operates, and it is fed by two main water sources (water mains coming from the City of San Francisco and from the Santa Clara Water District). Both systems deliver water at high pressures, with Santa Clara delivering water at approximately 170 psig and San Francisco at around 135 psig. Currently, the plant operates two 5 MGD tanks, which are typically divided between the two water systems – under normal operations, one tank is filled from the San Francisco water main while the other tank is filled from the Santa Clara water main. During the daytime, water is fed into the tanks from each system and then pumped back out of the tanks to their respective zones. About 1/3 of the tank volume is rolled over every day, to maintain the tank water quality since no automated chlorination or mixing system are available. This means that each day the water pumps must operate and consume power that is not necessarily required to do so if the tank water quality can be maintained.

There is some automated sampling that occurs at Gibraltar with HACH instrumentation that measures chlorine, chloramine, and turbidity. City operators have stated that the instrumentation has not been as reliable as they would like, likely in some part due to the age of the City instruments.

Gibraltar has a relatively modern Allen Bradley Control Logix Programmable Logic Controller (PLC) that operates a GE iFIX SCADA system. There is also a server for the control system and historian (database for historical data) located at the Gibraltar site. Currently the City has been experiencing some issues with the historian, and the current SCADA system is somewhat outdated since this technology evolves quite quickly.

Controls and SCADA Upgrade:

Based on the current condition of the site controls, ENGIE would recommend minor upgrades to the Allen Brandley PLC, which would include the addition of RF communication and additional Input/Output (I/O) cards as needed. The existing PLC is new enough to allow for easy expansion without having to make any drastic changes to hardware. The I/O cards would allow the addition of power monitoring equipment for the pumps on-site. There would also be new connections made for the new chlorine/ammonia injection system, to allow direct communication from the SCADA system to the new chemical injection and tank mixing controls.

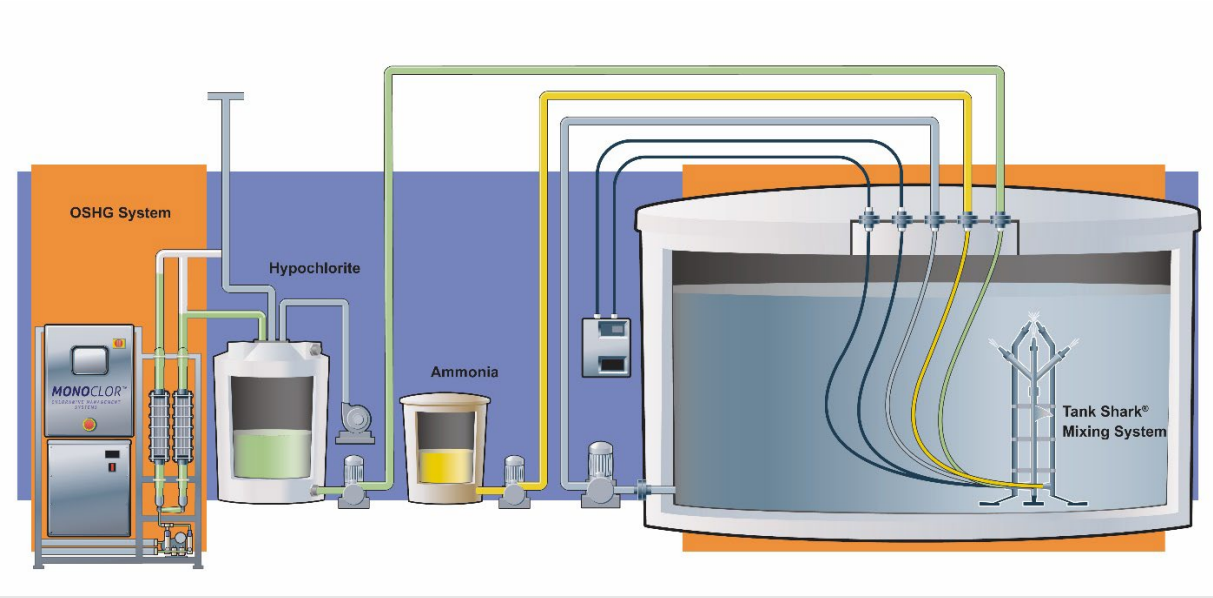
Additionally, since ENGIE is recommending moving to a new SCADA platform for the City as a whole, the Gibraltar site would be moved from the current GE iFix platform over to the new Ignition! platform, benefitting from the additional support it offers. This would also allow the system to be set up to monitor all of the water and stormwater sites from Gibraltar, since it is one of the primary water distribution sites for the entire Milpitas area.

City staff has mentioned that having one of the redundant servers at the Gibraltar site, in addition to some of the other City sites, is one of their goals; therefore, this was considered and included in the proposed scope.

Chemical Dosing and Tank Mixing:

In order to provide some of the proposed pumping savings and improve water quality at Gibraltar and throughout the City's distribution system, ENGIE has proposed a disinfectant boosting system designed to work with both tanks, add automated mixing, and allow the City to monitor and adjust dosing of the distribution water entering City zones from Gibraltar.

Figure 13. Disinfectant Boosting System Diagram



Since the Gibraltar tanks are large and flows will be intermittent, an active in-tank mixing system is being proposed to keep the tanks well mixed and the water quality stable. In the past, due to various factors in mixing and the inability to fully automate tank dosing and monitoring, the City has been unable to store water for long periods of time in the tanks without seeing degraded water quality. After this installation, the City should not be required to cycle the water in the tanks other than occasionally (ENGIE estimates once or twice a month at most). This will allow the distribution pumps to run far less frequently, and the majority of the distribution water to be supplied to the systems directly from Santa Clara and San Francisco, yielding significant energy savings for the City. The new disinfectant boosting system will also be able to adjust chemical dosing incoming from Santa Clara and San Francisco to stabilize disinfection chemistry towards optimal for the City's distribution system.

Ayer Tank Site

Ayer is the second largest water tank and pumping site at Milpitas, utilizing a single 5.6 MG tank and a 3-pump arrangement. The pumps include high efficiency motors and newer VFDs that are in good condition. The system is controlled by an older Allen Bradley PLC system that is well over 15 years old, and system hardware is also reaching end of life. Ayer currently has an older SCADA platform called Lookout, which was functional back in the day, but is very limited compared to modern SCADA platforms. There is ample room at the site for upgrades and operational improvements.

Controls and SCADA Upgrade:

Based on the current condition of the site controls, ENGIE recommends a complete upgrade. The existing panel and control wiring would be re-used, and the terminations for the existing equipment would just be moved to a new PLC rack. A local touch screen could be added to the cabinet as well as a local workstation to monitor the site. There would also be new connections made for the new chlorine/ammonia injection system, allowing direct communication from the SCADA system to the new chemical injection and tank mixing controls.

Additionally, since ENGIE is recommending moving to a new SCADA platform for the City as a whole, the Ayer site would be moved from the old outdated Lookout platform over to the new one, benefitting from the additional support it offers. This would also allow the system to be set up to monitor all of the City's water and stormwater sites from the local workstation if needed.

As with the other sites, the SCADA system would be tied into the network using RF communication between the sites and the Public Works building and/or the Gibraltar site. Data from Ayer would be available on the network and access to the entire system view could be made available at Ayer, if needed.

Chemical Dosing and Tank Mixing:

In order to improve water quality at the Ayer Tank site and throughout the distribution system, ENGIE has proposed a disinfectant boosting system designed to work with the single tank, add automated mixing, and allow the City to monitor and adjust dosing of the distribution water entering the city zones from the Ayer Tank. Since Ayer needs the pumps to distribute water, the ability to generate savings by shutting down pumps and delivering water to the distribution directly from the source isn't feasible.

Figure 14. Disinfectant Boosting System

The new disinfectant boosting system would maintain the water quality at the Ayer tank with minimal energy usage and would allow for tighter water quality control, especially during times of the year when nitrification is an issue. Like the Gibraltar site, the Ayer system would utilize a small on-site hypochlorite generation system as well as LAS to create monochloramines for system disinfection.

County Club Booster Station

The Country Club booster station takes water from the City distribution 2SF zone when the rest of the system cannot deliver the needed pressure to boost the water up to the Tularcitos tank. This station operates a minimal wet well for the water pumps and pumps water up the hill for 1,600 to 1,700 hours a year. The station's existing pumps, of a submersible style, are quite old, and it is unknown how their current condition compares to the original pump curves. City staff has stated that the pumps are reaching end of life and are becoming difficult to find parts for, with one pump even removed and offline for some time now due to the lack of repair parts.

Controls and SCADA Upgrade:

Based on the current condition of the site controls, ENGIE recommends a minor upgrade to the current SCADAPACK controls setup. The touch screen is quite old, but the PLC is more modern and can be easily upgraded with RF communication, tying into a new SCADA system should the City agree with that approach. ENGIE also recommends an upgrade on the controls programming, to add a new local touch screen with more in-dept data logging capabilities that could provide more data for operators and be integrated into a more modern software platform.

Pump Replacement:

With the age of the station's pumps and the fact that they are becoming difficult to find parts for, ENGIE recommends replacing the one pump that has not yet been repaired with a new vertical turbine pump (instead of matching the existing submersible pump style). This approach would replace aging equipment with a more efficient style of pump that is easier to maintain over time, reducing operation and maintenance costs. Vertical turbines have the motor set on top of the well head, allowing for easy access to the motor and reducing cable requirements to the motor which would otherwise sit submerged. Because the connections for a vertical turbine would be very similar, installation would be simple, likely only requiring an adapter flange, pipe, and new pump sole plate.

Vertical turbine pumps and motors are also generally more efficient due to the gain in motor efficiency, which would lead to energy savings. Given that this is also a deferred maintenance and redundancy issue, ENGIE believes this would be a good opportunity to upgrade to a more modern pump technology that will be easier to service while capturing some energy savings at the same time.

Tularcitos Tank Site

Tularcitos is the first hillside water tank that distributes water to the houses below the intersection of Tularcitos and Country Club Drives. The site utilizes a single 310,000-gallon tank and a 2-pump arrangement.

Controls and SCADA Upgrade:

Based on the current condition of the site controls, ENGIE recommends a minor upgrade to the current SCADAPACK controls setup. The touch screen is quite old, but the PLC is more modern and can be easily upgraded with RF communication, tying into a new SCADA system should the City agree with that approach. The system would be upgraded to pull in data from the automated tank dosing and mixing system and could provide that data to the new SCADA system.

Chemical Dosing and Tank Mixing:

In order to improve water quality at the site and throughout the distribution system, ENGIE proposes a disinfectant boosting system designed to work with the single tank, add automated mixing, and allow the City to monitor and adjust dosing of the distribution water feeding the houses below the tank, as well as water being pumped up to the Minnis Tank. Since Tularcitos needs the pumps to pump water to the Minnis tank, the ability to generate savings by shutting down pumps is not possible here.

The new disinfectant boost system will maintain the water quality at the tank with minimal energy usage and improved water quality control especially during times of the year when nitrification is an issue. Like the other tank sites, the Tularcitos system would utilize a small on-site hypochlorite generation system as well as LAS for creation of monochloramines for system disinfection.

The tank monitoring system will take into account that there isn't a drain present at the tank site and no water can be discharged.

Pump Replacement:

Much like Country Club, the Tularcitos submersible pumps are quite old (have been in service since 2003) and are becoming difficult to find parts for. Therefore, ENGIE recommends replacing the one pump that has not yet been repaired with a new vertical turbine pump (instead of matching the existing submersible pump style). This approach would replace aging equipment with a more efficient style of pump that is easier to maintain over time, reducing operation and maintenance costs. Vertical turbines have the motor set on top of the well head, allowing for easy access to the motor and reducing cable requirements to the motor which would otherwise sit submerged. Because the connections for a vertical turbine would be very similar, installation would be simple, likely only requiring an adapter flange, pipe, and new pump sole plate.

Vertical turbine pumps and motors are also generally more efficient due to the gain in motor efficiency, which would lead to energy savings. Given that this is also a deferred maintenance and redundancy issue, ENGIE believes this would be a good opportunity to upgrade to a more modern pump technology that will be easier to service while capturing some energy savings at the same time.

Minnis Tank Site

Minnis is the second and final hillside water tank that distributes water to the houses above the intersection of Tularcitos and Country Club Drives. It utilizes a single 350,000-gallon tank and is gravity fed to the housing below. Currently, this tank has had the most issues with nitrification during parts of the year, so being able to maintain its water quality is critical both for water supply and fire protection reasons.

Controls and SCADA Upgrade:

Based on the current condition of the site controls, ENGIE would recommend a minor upgrade to the current SCADAPACK controls setup. The touch screen is quite old, but the PLC is more modern and can be easily upgraded with RF communication, tying into a new SCADA system should the City agree with that approach. ENGIE also recommends an upgrade on the controls programming, to add a new local touch screen with more in-depth data logging capabilities that could provide more data for operators and be integrated into a more modern software platform. The system would be upgraded to pull in data from the automated tank dosing and mixing system and provide that data to the new SCADA system.

Chemical Dosing and Tank Mixing:

In order to improve water quality at the site and throughout the distribution system, ENGIE proposes a disinfectant boosting system designed to work with the single tank, add automated mixing, and allow the City to monitor and adjust dosing of the distribution water feeding the houses below the Minnis tank.

The new disinfectant boosting system will maintain the water quality at the tank with minimal energy usage and improve water quality control especially during times of the year when nitrification is an issue. Like the other tank sites, the Tularcitos system would utilize a small on-site hypochlorite generation system as well as LAS to create monochloramines for system disinfection.

This tank monitoring system will take into account the fact that there isn't a drain present at the site, and that no water can be discharged.

3.14.8. Stormwater and Wastewater Stations

The City of Milpitas currently operates 13 stormwater stations and 2 wastewater lift stations. All of these stations have limited remote communication and often require frequent visits from operators to monitor conditions and inspect equipment. When there is an issue, it can often take up to half a day to inspect the station and acknowledge alarms which may or may not be critical. Additionally, in most of the stations the infrastructure is starting to show its age even though the equipment is well maintained. The wastewater main lift station on McCarthy Blvd has been upgraded, but the majority of the stormwater stations have had minimal upgrades other than the addition of small electric pumps for low flow conditions. Like with most cities, budgets are squeezed, and staff struggles to keep up with deferred maintenance.

The goal of this ECM is to upgrade each of the stations with new controls and add the ability to remotely communicate with the stations so staff can monitor status from afar. The controls upgrade would also allow staff to acknowledge non-critical alarms without visiting the sites, saving manpower hours which can be used for other deferred maintenance. By adding new controls and remote communication, the staff will be able to more effectively manage City resources, especially during critical weather events.

Stormwater and Wastewater Station Controls and Remote Communication

Currently, stormwater and wastewater stations have very basic relay or loop controllers. Because of the age and style of the controllers, it isn't feasible to integrate them to remote communication. Additionally, the age of the existing hardware is to the point that if there were a major failure of the critical panel components, the City would be hard pressed to find replacement parts and may be forced into an upgrade during peak operating times.

Based on these factors, ENGIE recommends the addition of new local PLC panels at each of the stormwater stations and the Main Lift wastewater station. These new PLC's would replace the old relay-based control panels and would have local touch screens added to the system to locally control the basic station functions. Additionally, entry detection and other alarming for each stormwater site would be added to each station as part of the upgrade. New RF communication equipment is planned for each station so that the data could be transmitted to the new SCADA software platform chosen by the City. Data would be distributed between the Gibraltar and Public Works offices and could be viewed on any workstation on the system as well as remotely. This would allow for remote access to check on local alarms and acknowledge non-critical ones.

ENGIE proposed to monitor the following items at each of the stations:

1. Entry Detection
2. Electric/Jockey Pump Run/Stop
3. Power Monitor for Electric Pumps
4. Water Level
5. Fuel Level (If available)
6. Fuel Leak Detection Alarm
7. Engine Driven Pump Telemetry (Discussed below)
8. Engine Heaters On/Off
9. VFD On/Off

Engine Controls for Pumps

Because the diesel-driven pump engines at the stormwater sites are quite old, part of the controls retrofit at each of the stations is new controls for each of the engine-driven pumps. This would include up to 17 total engine-driven pumps across all of the stations.

Each engine would get upgraded telemetry and a local control panel so that it can be individually operated for testing. The new controls would include upgrades to engine instruments to allow recording of the following engine data:

1. Run/Stop
2. Total Run Hours
3. Engine RPM
4. Engine Temp

Additional telemetry can be added if needed for reporting or for City staff monitoring.

The updated controls would extend the usable life of the engines for at least another 10 to 20 years, giving the City time to plan for replacement of the engine-driven pumps at some point in the future.

Stormwater and Sewer Lift Stations

Table 23. Stormwater and Sewer Lift Station Summary

Site	Type	Address
Jurgens Storm Pump Station	Storm	345 Jurgens Drive
Spence Creek Storm Pump Station	Storm	11 Butler Street
Penitencia Storm Pump Station	Storm	944 LaHonda Drive
Milpitas Materials Storm Pump Station	Storm	1125 N. Milpitas Blvd
Abbott Storm Pump Station	Storm	1225 N. Abbott
California Circle Storm Pump Station	Storm	1735 California Circle
Berryessa Storm Pump Station	Storm	731 Folsom Circle
Murphy Ranch Storm Pump Station	Storm	801 Murphy Ranch Road
Bellew Storm Pump Station	Storm	481 Murphy Ranch Road
Oak Creek Storm Pump Station	Storm	1521 McCarthy Blvd
PD Sump Storm Pump Station	Storm	1275 N. Milpitas Blvd
Wrigley Ford Storm Pump Station	Storm	75 Marylinn Drive
Manor Storm Pump Station	Storm	349 Marylinn Drive
Main Sewer Lift Station	Sewer	1425 N. McCarthy Blvd
Venus Lift Station	Sewer	1085 Venus Way

Jurgens Stormwater Station

This site is typical of the stormwater stations in Milpitas. It has four CAT engine-driven pumps that are connected to a relay-driven control system. The existing panel would be removed, upgrading the engine controls to modern digital controls. Additionally, a new touch screen PLC would be added to the site to pull all the telemetry from the new engine controls. A new RF communication system would also be added to the site to communicate with either Gibraltar or Public Works.

Spence Stormwater Station

This site just consists of outdoor panels that contain the relay controls for the electric pumps. The outdoor enclosure would be upgraded for a new PLC and a new RF communication system would be added to allow for communication with either Gibraltar or Public Works. It is understood that this site doesn't operate very frequently but would be upgraded as part of the overall project.

Penitencia Stormwater Station

This site is different than many of the stormwater station sites in Milpitas in that it only has two FIAT engine-driven pumps (instead of CAT-driven ones) and one electric jockey pump. This station, like the others, has an older relay-based control panel that would be replaced with a new modern PLC panel. The engines would be updated with new controls, and the jockey pump would be added to the new controls and PLC panel. This would give the operators more control to adjust the set points for the operation of the engines and jockey pump. Other control points, such as entry detection and fuel system status, could also be integrated into the new controls for this site if control points are present in the existing fuel system monitoring.

Milpitas Materials Stormwater Station

This site, adjacent to Public Works, includes two electric pumps and a relay panel that is entirely located outdoors. One of the existing panels may be reused and a new PLC based controls and communication can be added. There is limited other telemetry from this site outside of the electric pump and level detection.

Abbott Stormwater Station

This site includes two 30HP electric pumps and a relay panel located in a small building. The pumps are quite new and driven off a loop controller. A new PLC panel with a local touch screen would be added to the interior of the building, along with remote RF communication. This site would include just basic pumping controls and would also have intrusion detection. No other telemetry is expected.

California Circle Stormwater Station

This site includes three CAT 3208 diesel-driven pumps with relay-driven controls in one panel for all three pumps. There is also a single loop controller that controls engine operation based on the level in the adjacent surge pond. An outdoor diesel tank and leak detection would also need to be tied into the new controls.

The engines would receive new controls and their own local panel, and the site would also receive a new Master PLC and touch screen for control and monitoring of the station. As with the other stations, telemetry would be sent to Gibraltar or Public Works to be captured by the main SCADA system. Operators would be able to see general operation telemetry from the site and could expand monitored points if needed.

Berryessa Stormwater Station

This site is adjacent to a creek and a community pond that is also used for surge capacity. The station includes three CAT diesel-driven pumps with somewhat modernized Ryeso digital engine controls in three separate panels. Additionally, there is an electric jockey pump at the site being run by a loop controller. There is also an outdoor in-ground diesel tank along with leak detection that would need to be tied into the new controls.

The engine controls at this site are more modern, and therefore have the potential to be re-used but that would have to be determined during a more detailed engineering audit. For now, it has been assumed that the engine controls are suitable for re-use and can be tied into a new PLC that will control the engine-driven pumps as well as the electric jockey pump. The PLC would pull other alarm systems at the site, including entry notification and an RF communication system would be added to allow the PLC to communicate with the new SCADA system.

Murphy Ranch Stormwater Station

This site includes three CAT diesel-driven pumps with older relay-based engine controls in a single panel. Additionally, there is an electric jockey pump at the site being run by a loop controller. There is an outdoor in-ground diesel tank along with leak detection that would need to be tied into the new controls, and likely new control wiring and conduit would need to be run into the building. The PLC would pull other alarm systems at the site, including entry notification, and an RF communication system would be added to allow the PLC to communicate with the new SCADA system.

Bellew Stormwater Station

This site includes one CAT diesel-driven pump with older relay-based engine controls in a single panel. Additionally, there are two electric pumps at the site being run by loop controllers. There is an outdoor in-ground diesel tank along with leak detection that would need to be tied into the new controls. The PLC would pull other alarm systems at the site, including entry notification, and an RF communication system would be added to allow the PLC to communicate with the new SCADA system.

Oak Creek Stormwater Station

This station is adjacent to a creek and a community pond that is also used for surge capacity. The site includes three CAT diesel-driven pumps with older relay-based engine controls in a single panel. There is one electric jockey pump at the site being run by a loop controller. There is an outdoor above-ground diesel tank along with leak detection that would need to be tied into the new controls. The PLC would pull other alarm systems at the site, including entry notification, and an RF communication system would be added to allow the PLC to communicate with the new SCADA system.

PD Sump Stormwater Station

The PD Sump Stormwater site is located at the Milpitas Police Department. The site includes two electric pumps and a relay panel located in a small building. The pumps are quite new and driven off a loop controller. A new PLC panel with local touch screen would be added to the interior of the building, along with remote RF communication or perhaps tied directly through Wi-Fi or wired connections. The site would include just basic pumping controls and would also have intrusion detection, but no other telemetry is expected.

Wrigley Ford Stormwater Station

This site includes two electric pumps and a relay panel with loop controllers that control pumps based on level detection. There is a backup generator that could be tied into the new PLC as well but is currently not planned, since a lot more information will be required for that integration. A new PLC panel with local touch screen would be added to the interior of the building along with remote RF communication. The site would receive just basic pumping control and would also have intrusion detection. Because of past vandalism, this site might be a good candidate for additional security measures such as cameras.

Manor Stormwater Station

This site includes three electric pumps and a relay panel with loop controllers that control pumps based on level detection. The panels in this location are located outdoors, but there should still be enough space for a new PLC with local touch screen in the interior of the cabinets, along with remote RF communication. The site would include just basic pumping controls and would also have intrusion detection at the panel level. Because of past vandalism, this site might also be a good candidate for additional security measures such as cameras or additional intrusion detection.

Main Sewer Lift Station

This site has several site lift pumps, grinders, and other equipment that would be added to a new PLC, and it is also a candidate for a local server for redundancy. A new PLC panel with local touch screen would be added to the interior of the building along with remote RF communication. The site would receive pumping controls, intrusion detection, and level detection for the wet wells, and would tie in any existing flow controls. This site might be a good candidate for additional security measures such as cameras that could be networked into the system, depending on the speed of the internet connection that is available on-site.

Venus Sewer Lift Station

This is a simple lift station with pumps that are located underground for the most part. A small antenna and mast may need to be mounted here to get a good signal, but it would be small and inobtrusive. Telemetry from this site would just bet the wet well depth and the pump run data for on/off and run hours. For security, intrusion detection could be added to let the system know when the hatch is accessed, or the control panel is opened. Additionally, if desired, a small touch panel inside of a sealed electrical box may be added for ease of maintenance or local control.

3.14.9. Pressure Reducing Valves (PRVs)

The City of Milpitas has indicated that they would like to see their Pressure Reducing Valves (PRVs) added to the SCADA and automation scope. This is something ENGIE proposes to continue investigating alongside City staff, since the sites are numerous and require higher levels of engineering and additional investigation.

ENGIE did a thorough investigation of the PRV stations as part of the RF study and found that all of them are reachable with RF communication equipment. However, because some of the locations are fairly challenging to get power to and may require erecting an antenna for communication, a much more in-depth audit will be required. Many of the sites may need to pull power from nearby power poles or building lighting of which ownership still needs to be verified. A detailed review of each site and how power can be added to the vaults is needed to ensure that they can all operate properly within the system.

Additionally, the PRV valves and flow meters may need to be replaced to be compatible with new SCADA telemetry. There is also limited space at many of the locations, and therefore the type of PRV that can be used will need investigation as well as what style of flow meter might be compatible with the installation locations. The City has also indicated they would like to consider shutoffs at some of the PRV locations for maintenance purposes, which can also be evaluated during a more detailed audit.

Table 24. PRV Locations

Site	Address
Calera Creek Heights PRV	Near 163 Calera Creek Heights Drive
Capitol PRV	N. Capitol Ave between Montague Expwy and City limits
Curtis PRV East	W. Curtis Ave between Main/Abel
Curtis PRV West	W. Curtis Ave between Main/Abel
Gibraltar PRV21A	641 Gibraltar Court
Gibraltar PRV21	641 Gibraltar Court
Gibraltar PRV22	641 Gibraltar Court
Main PRV	Hammond Way
Milpitas PRV	N. Milpitas/Calaveras, north of City Hall
North Vault PRV	Near 1475 Pinehurst Court
South Vault PRV	Near 1486 Tularcitos Drive
Sunnyhills PRV	Washington/Escuela
Abel PRV	Junipero/Abel
Live Oak PRV	Live Oak Ct/Highway 680
McCarthy PRV1	South of Cadillac Court

Site	Address
McCarthy PRV2	South of Dixon Landing Lagoon
Montague PRV	Montague Expwy/Highway 680
Sinclair PRV	Sinclair Frontage Rd/Yosemite Drive

3.14.10. Savings Summary

Preliminary costs for the measures outlined in this section are estimated at $7.36MM. Additionally, ENGIE proposes an allowance of $1.8MM to be added to this scope, to fully utilize available funds and give the City the flexibility to finalize SCADA software selection and include additional PRV work as needed.

Table 26 below summarizes savings for this proposed measure.

Table 25. SCADA, Pumping, and Automated Disinfection Summary

Description	Projected Annual kWh Savings	Projected Annual Cost Savings	Projected Annual O&M Savings
Water System Controls, Pumping, and Automated Disinfection	840,672	$146,612	$41,600

4. Savings Calculations and Methodology

To calculate if a proposed energy efficiency measure or renewable energy project is financially viable, a rigorous analysis is performed. First, at each location where a measure or project is being considered, a baseline electrical, gas, or water usage profile is calculated. Then the expected production or savings is calculated and matched to the baseline load. Finally, the dollar savings are calculated matching the resulting net load profile to current utility rates. The modeling is different for electrical, gas, and water meters and is examined in more detail below.

4.1. Baseline Establishment Methodology

ENGIE thoroughly investigated and documented baseline energy and water usage profiles of City of Milpitas facilities included in this CEA. Our approach to baseline development involved the following steps:

- Performing a utility analysis to determine the usage of various City of Milpitas facilities and the cost of energy and water. This includes demand and real-time pricing, seasonal price changes, and historical cost escalation.
- Surveying City of Milpitas buildings to document existing conditions and operating requirements.
- Interviewing facility managers regarding operating hours, upcoming renovations, problem equipment, occupant complaints, and many other human factors. Well-documented information from the interviews and site walks are used in savings calculations to determine whether a proposed energy or water conservation measure will benefit the facility and its occupants. Using the results of the utility analysis and expected future use of the facilities, a baseline usage for electricity, gas, and/or water is generated for each facility where a proposed measure or project is located. For electrical baseline calculations, hourly incremental usage is calculated when needed. For both gas and water usage, monthly summary data is sufficient for baseline modeling.

4.2. Solar Production and Savings Modeling

The production of each proposed solar PV system was modeled using industry standard software, PVSyst. This software allows the user to accurately analyze the PV production with custom inputs such as site location, equipment manufacturer, system azimuth, panel tilt, and system losses. The weather and irradiance data, a critical input, is TMY3 (Typical Meteorological Year) data collected at the San Jose International Airport from 1991-2005. TMY3 data sets are provided by the National Renewal Energy Laboratory. Using these inputs, PVSyst outputs one year of expected PV system electricity output (kWh) on hourly intervals.

Once hourly kWh production values are determined, the dollar value of each kWh produced is determined using a third-party energy modeling tool. Current baseline electricity usage and modeled PVSyst hourly production data were entered into the modeling tool. Using current utility rates, the monetary value of the energy produced by each solar PV system is calculated. For each solar PV system, a comprehensive analysis was done to determine optimal utility rate and interconnection tariff to maximize the value of each kWh produced.

4.2.1. Community Choice Aggregation (CCA)

ENGIE is aware that the City of Milpitas recently migrated to Silicon Valley Clean Energy (SVCE) as a power provider. We have modeled this project using current PG&E rates. SVCE aims to be more solar-

friendly, which may offer benefits on PV value compared to the PG&E base case. ENGIE used PG&E rates in the analysis as this will offer a conservative base case for PV savings.

4.3. Battery Storage Savings Modeling

The production of the BESS was modeled using the battery supplier's proprietary modeling tools. The values were then checked using a third-party energy modeling tool, to ensure that the kW savings and dollar savings were reasonable. Depending on how the BESS systems are used for backup purposes, they Demand savings may be limited, especially during times when power outages are more likely (e.g. high fire-risk times and leading up to PSPS events).

The estimated bill savings were calculated for each meter by using the new implementation baseline (with the final selected ECM savings taken into consideration), through a third-party energy modeling tool, using current rate schedules to create a baseline billing. The battery kW demand savings were then subtracted from the baseline data. This reduced 15-minute interval data was then again run through the third-party energy modeling tool. The difference between the baseline output and the reduced output was used as the expected dollar savings from the battery systems.

4.4. Transformer Savings Modeling

ENGIE inspected each low voltage transformer that the City owns to determine its kVA or energy rating, its base efficiency, and if there would be any issues related to the installation of a new, higher efficiency transformer in the same location. ENGIE also performed measurements of the actual transformer loading and losses. This data, in addition to historical and industry standard data, were used to determine existing transformer usage and potential energy savings. Energy (kWh) expected reductions were then multiplied by each site's average electricity rate.

4.5. Lighting Savings Modeling

ENGIE performed a detailed audit of City facilities, including individual fixture details, fixture counts, and existing controls. If a fixture retrofit or replacement provided energy savings, maintenance savings, and improved lighting quality, the fixture was considered for replacement. In some cases, where the existing lighting system already represents the most effective solution or LED replacements are not available for the existing fixture, the systems will not be modified. The lighting savings per year are based on a reduction of wattage, or kW per fixture, and reduced hours of use.

A reduction in kW is accomplished simply by using higher efficiency LED fixtures, which provide a similar light output. Savings per year were estimated based on the reduction of kW and the hours of usage. Hours of usage were estimated based on room and building type, as well as feedback from City staff. Existing consumption was then vetted against current utility bills, to verify if assumptions proved accurate, and adjusted as needed.

When installing new controls (such as occupancy sensors or dimming capabilities for interior spaces, or bi-level dimming for exterior applications), a savings percentage was used to calculate the new reduced hours of operation for the impacted fixtures.

Energy (kWh) savings are finally multiplied by the average electricity rate for each and every facility, determining the total dollars saved per year.

- kW= Fixture kW
- H= Operating Hours per Year
- ES= kW Hr Savings
- ER= Energy Rate ($E/kWh)
- $S= $ Savings

$$(kW \times H)_{existing} - (kW \times H)_{new} = ES$$

$$ES * ER = \$S$$

4.6. HVAC Savings Modeling

The annual energy savings resulting from installation of replacement units was determined using eQuest 3.65, a graphical user that interfaces with the Department of Energy's 2.2 whole building analysis software tool. Using inputs including averaged 30-year TMY2 weather data, occupancy schedules, building loads, building parameters, zone, and equipment performance specifications, ENGIE created a baseline energy model. After this baseline model was calibrated to match the profile of the current electrical and gas consumption, the new equipment and controls measures were added into the model to determine the new energy profile for each measure. The difference between the baseline and new energy profile is the energy savings resulting from the ECM. Electrical bill savings were then calculated multiplying the kWh energy savings per site by each site's corresponding blended $/kWh utility rate.

4.7. EMS Savings

Upgrading the City's EMS controls will enable the facilities engineers to monitor the operation set points of the equipment and collect trending data on operation set points. Consequently, the facilities engineer will be able to use this data to determine and set up a sequence of operation for the equipment that will optimize its energy consumption. Savings will be completely dependent on any action taken by the City and subsequent modifications to the system's usage, and therefore were not estimated for this analysis.

4.8. Water Fixture Savings Modeling

ENGIE performed a detailed audit of all City water fixtures, recording their actual and nameplate consumption rates, as well as noting conditions. Existing water consumption was determined using the measured gallon per flush and gallon per minute rates for each fixture, the number of fixtures counted during the on-site audits, and standard assumptions about fixture uses per day (based on building types and occupancy hours). A new water usage profile was created using the proposed lower gallon per flush and gallon per minute rates. These savings were kept in an annual savings format, as water utility rates do not vary based on time of day.

The estimated bill savings were calculated by subtracting the new water usage profile from the baseline profile to determine water savings in CCF. Current City of Milpitas $/CCF rates were then used to calculate bill savings for each facility.

4.9. Water Meter Savings Modeling

Estimating the full value of retail water being delivered starts with a billing system analysis. This analysis details the water meter quantities and distribution, breaking it down by size and type, and also looks into the system-wide difference between total water purchased and total water billed to City customers.

ENGIE gathered and analyzed three years of City of Milpitas' billed consumption and AWWA reports, a database of City water meter quantity by size, the distribution of City water consumption by meter size, as well as current water rates.

ENGIE worked closely with City staff to determine percent losses to be applied to City meters in this evaluation. The City of Milpitas has bench-tested their larger meters throughout the years, with the most recent AWWA reports showing 5%, 3%, and 2% losses for 2016, 2017, and 2018, respectively. Therefore, ENGIE used a conservative 1% loss percentage. Regarding the smaller water meters, industry standards indicate that those losses can easily range from 10-15%, with studies showing that 16% of all domestic water usage occurs at flows smaller than 1 GPM (which older meters cannot register and are therefore never recorded). Older meters like the ones seen at Milpitas (some almost 30 years old) are especially bad at accurately measuring low flows, but ENGIE used a conservative 4% loss for smaller meters. Newer meters are tested and certified at 100% accuracy, so the full losses can be reclaimed.

Minimizing under-reporting ensures that the City can bill customers to the full extent of the service provided. Dollar values of the savings were calculated based on market prices for the water being sold to customers.

4.10. Pumping Savings Modeling

Pump savings are determined based on the calculated reduced kWh, multiplied by the average electricity rate for each pumping station in question.

4.10.1. Gibraltar

To calculate pump energy savings associated with the new automated tank dosing systems, ENGIE studied the current versus proposed operating schedule for the pumps in question, in addition to pump curves and any data available from the sites' historians.

Currently, the Gibraltar tanks are required to be cycled on a frequent basis to maintain the quality of their water. The tanks are also required to maintain a minimum capacity as a fire reserve for the system. This frequent cycling means that water must be delivered into the tanks, its quality checked, and then pumped back out of the tanks. The Gibraltar tanks are filled from the Santa Clara and San Francisco water systems from roughly 7:30 AM to 5:30 PM every day, meaning that the pumps must run on approximately the same schedule to provide water to the distribution system during those times.

With the new automated tank dosing system, the water in the tanks will not need to be cycled and the pumps will be able to be mostly shut off, with water being distributed directly to the distribution system from the incoming water mains. The City should not be required to cycle the water in the tanks other than occasionally (ENGIE estimates once or twice a month at most, but conservatively used 5 days/month for this analysis). Additionally, ENGIE also included a 70% certainty factor to this estimate, to take into account variations in actual daily operation. This would still allow a bi-weekly tank turnover for each tank at Gibraltar, and account for the pumps running on a semi-frequent basis to maintain good operational functionality.

Savings were then calculated based on the provided pump curves and data from the Gibraltar historian, using the current operating pumping schedule for both pump #4 and pump #6 as a base, and assuming that they will be allowed to be turned off for 25 out of 30 days every month.

4.10.2. Country Club and Tularcitos

To calculate energy savings associated with the high-efficiency motor pump upgrades, ENGIE studied the current submerged pump performance and the proposed vertical turbine pump efficiency. Assuming the same operating schedules, savings were obtained from the reduced energy required to operate the new, more efficient, pump in the same capacity as the existing one.

For Country Club and Tularcitos, since a recent pump test for either site is not available, the current energy savings calculated would likely be the minimum savings from the addition of a new pump. If the existing pump is worn at all, the motor has lost efficiency, or there are any other issues repaired during the pump replacement, savings would likely increase (typically between 5-10%).

4.11. Operation and Maintenance Savings

Several measures carry operational savings related to avoided materials or repair costs based on the longevity or age of the asset. After implementing the retrofits recommended by ENGIE, the City of Milpitas will reduce material dollars spent maintaining equipment replaced by this program. Additionally, implementing these measures will allow the City of Milpitas staff to redirect their efforts to preventative maintenance or other critical tasks instead of repairing aging equipment.

4.11.1. Lighting

The rated life for LEDs is significantly longer than that of fluorescent or HID fixtures. LEDs are typically rated to 50,000 hours whereas comparable non-LEDs are typically rated to 20,000 hours. Maintenance savings are based on the reduction in labor (estimated based on City staff hourly wages) and material costs due to the increased life of LEDs.

Using each specific City of Milpitas facilities burn rate, the average fixture life is calculated for all existing and new fixtures. Over the lifetime of the project, each LED lamp will need to be replaced significantly fewer times. Existing HID streetlights and sports lights are estimated to have a 10-year lifespan, and therefore an average 10% of them need to be replaced every year, while LED lamps will last considerably longer. This reduction in lamp replacements offers significant operational and maintenance savings for the City of Milpitas, as they save money on materials and free up personnel to deal with other tasks.

Furthermore, “average life” is defined differently for LEDs compared to fluorescent or HID lights. For LEDs, average life is defined as the number of run hours when the lumen output has decreased to 70% of initial output. LEDs do not burn out in the traditional sense and have an extremely low spontaneous failure rate. For fluorescent and HID fixtures, average life is defined as the number of run hours when 50% of the lamps will have failed. Where fluorescent lamps burn out completely, LEDs continue to operate well past their rated life. Finally, unlike some non-LED lighting technologies, LED life is not adversely affected by 24/7 usage, excessive switching, or compatibility with existing controls.

4.11.2. HVAC

HVAC maintenance savings stem from a combination of reduced staff time in responding to complaints and reduced spending on any maintenance contracts with third parties to repair aging equipment. ENGIE reviewed the City's last three years of contracts with their HVAC maintenance providers, obtaining annual costs. These encompass all City HVAC units, not just the ones ENGIE is proposing to replace, but most of the high-issue units are included in the proposed replacement scope.

Another approach is to take into account the capital cost avoidance of replacing this equipment down the line. As a rule of thumb, HVAC units have a lifetime of 20 years, so it is safe to assume that given different ages of existing equipment, these will be failing at a rate of 5% a year for the lifetime of the project.

ENGIE compared the estimated savings based on both approaches, and ultimately used the capital cost avoidance method, which yielded more conservative savings (annual City contracts amounted to more than twice as much).

4.11.3. EMS

EMS savings are calculated by estimating the reduction in maintenance staff time to respond to alarms in order to troubleshoot on site and make setting adjustments. The new EMS at the Public Works and Police Department building will allow remote troubleshooting and setting adjustments at a greatly reduced time demand on facilities engineers. Benefits will be faster fixes of problems and a more comfortable and reliable working environment for City staff.

4.11.4. Water Fixtures

Water fixture maintenance savings are calculated based on quantities in scope and the failure rate of each type of equipment over its lifetime. These are primarily from the material costs saved by avoiding these fixes.

Additional savings could be estimated from reduced staff time in responding to complaints, fixing aging equipment, and repairing leaks, but those are difficult to estimate and are expected to be quite small. Therefore, no labor savings are included in the CEA.

4.11.5. Water Meters

Water Meters are currently read manually by City staff, and maintenance savings will stem from having this task automated, freeing up staff to work on other tasks. The City currently has two full time employees and one part-time employee reading water meters, and savings were estimated based on their hourly wages.

4.11.6. SCADA and Automated Dosing

SCADA savings are calculated by estimating the reduction in maintenance staff time to respond to alarms in order to troubleshoot on site and to make setting adjustments, as well as removing the need for a secondary weekly physical sampling, which will be able to be completed remotely and continuously. This will free up personnel to work on other tasks throughout the City.

Based on conversations with City staff, we estimated the frequency and duration of these events, and calculated the reduction in labor costs associated with these changes using the technician's hourly wages.

4.11.7. Summary

Total O&M savings per measure are summarized in Table 27 below.

Table 26. O&M Savings Summary

Measure	Annual O&M Cost Savings
Lighting	$142,875
HVAC	$81,930
EMS	$8,320
Water Fixtures	$1,090
Water Meters	$416,000
SCADA and Automated Dosing	$41,600

5. Project Costs and Financing

To allow the City of Milpitas to take advantage of the energy and water savings described above, ENGIE provided information and support on project financing. This began during the design process by including products and solutions eligible for energy and water conservation rebates, as well as gathering information on financing options. Our Project Finance staff is available and ready to assist in identifying financing options as needed.

5.1. Rebates, Incentives, and Grants

Financial incentives for renewable energy projects, energy efficiency measures, and water conservation measures are sometimes offered through local utilities and the State of California. We investigated the availability of programs applicable for this project. It is very important to note that although these programs were in effect at the time this report was issued, incentive programs can and do change quickly. It is possible that any incentive programs will either change or close before the City can take advantage of them.

5.1.1. Utility, Regional, and Tax Incentives

The City of Milpitas is located in the PG&E utility service territory. ENGIE tracks and manages the application process for all PG&E rebates and incentives relevant to the program scope, as well as offerings from any other currently available programs.

At this time, the proposed project may eligible for the following rebates:

- **Deemed LED Lighting** – Can be eligible for incentives up to $105/fixture for qualifying interior, exterior, and streetlighting fixtures. Would need to be installed by October 2020. Timing may not work for the City, but we will continue to keep our eye on whether the City and proposed fixtures qualify.
- **Customized LED Lighting** – Can be eligible for incentives up to $0.08 per kWh saved with qualifying interior, exterior, and streetlighting fixtures. Would need to be installed by October 2020. Timing may not work for the City, but we will continue to keep our eye on whether the City and proposed fixtures qualify.
- **Electric Vehicle Charging** – Can be eligible for incentives up to $5,750 per site with five double-port charging stations installed, but currently proposed scope does not include enough fixtures per site to qualify. Unfortunately, City sites are also not eligible for the higher, PG&E-owned EV charging rebate structure, since they are not located in the eligible areas. There may be additional funding for EV charging available from Silicon Valley Clean Energy (SVCE) and the California Electric Vehicle Infrastructure Project (CALeVIP), for both level 2 and DC fast chargers. Program details are expected to be released in Fall 2020 (likely to be a first come, first serve incentive), so conservatively nothing is yet accounted in this CEA. ENGIE will continue to work with the City to coordinate with SVCE and CALeVIP to take advantage of any available incentives. Additionally, ENGIE is monitoring the Bay Area Air Quality Management District (AQMD) incentive programs in the event they re-open eligibility for EV charging incentives.
- **Self-Generation Incentive Program (SGIP)** – This rebate is available for all BESS systems, and requires completion of at least 104 equivalent round-trip cycles per year. To obtain SGIP, the system does not need to be paired with solar PV. As of September 2020, SGIP has 4 different incentive levels. The City of Milpitas qualified for the standard $0.40/Wh at

Community Center and Senior Center, as well as the Equity incentive of $0.85/Wh at Public Works. We expect the City Hall, Sports Center, and Fire Station #1 will qualify for the next Tier of SGIP standard Large-Scale Storage incentives, at $0.35/Wh. ENGIE submitted applications for the 3 systems in the recommended bundle (Community Center and Senior Center to the standard program in Bundle C1, and Public Works to the Equity program in Bundle C2). The two standard applications are currently under review, while the Public Works Equity application was placed on a waitlist on 5/15/2020 since the program has limited funds and was significantly oversubscribed. ENGIE is gathering information on the likelihood of additional Equity funds being available for the City of Milpitas, or whether they might want to apply for the standard incentive for Public Works instead.

Table 27. BESS and SGIP Summary

Site	System Size (kW)	System Size (kWh)	SGIP Incentive Level	SGIP Incentive
Police Department/ Public Works	375	750	Equity	$568,650
City Hall	375	750	Standard	$234,150
Senior Center	125	250	Standard	$89,200
Community Center	125	250	Standard	$89,200
Sports Center	250	500	Equity	$156,100
Fire Station #1	125	250	Standard	$78,050

- **Customer Relief and Community Resilience –** As part of their COVID-19 response, SVCE is investing in the planning and infrastructure development of community resilience efforts. Funds have been earmarked for the City of Milpitas, estimated at over $700,000. ENGIE has assisted the City in completing an application for these funds to be split among the Senior Center and Community Center microgrids. Current project pro-formas assume these incentives will be paid in the first year after project operation.
- **Advanced Metering Infrastructure (AMI) water meter conversion incentives** – The Santa Clara Valley Water District (Valley Water) offers rebates for AMI water meter conversion when combined with water use reports to customers. ENGIE will work closely with the City and Valley Water to ensure the City can take advantage of the $10 per AMI meter conversion annually over 7 years to help supplement its Capital contribution. We estimate that the City is eligible for a total of $1,091,790 in incentives from Valley Water.
- **Water Fixture Retrofits** – ENGIE is also working closely with Valley Water to understand and leverage any incentives available for water fixture retrofits. There are programs currently under development for toilet and urinal replacements, and potentially material availability for water-efficient aerators and pre-rinse sprayers that the City may be able to take advantage of.
- **Investment Tax Credit (ITC)** – This Federal tax rebate of 30%* is available for solar PV as well as BESS systems that are charged from solar. ITC is only available to the City if the project has been financed through a Power Purchase Agreement (PPA), and the battery is owned by a private entity – an approach our finance team could work with the City to analyze.

The SGIP incentive decreases to $0.29/Wh when going after ITC, and there are rigid construction schedule deadlines that must be met to qualify.

*The Federal ITC stepped down to 26% from 30% in 2020, however ENGIE has procured enough solar equipment to safe harbor the 30% incentive for its customers if they are in construction in calendar year 2020.

5.2. Other Financing Options

In addition to rebates for individual measures, ENGIE has provided information on other financing options to support a comprehensive energy and water savings program. These include Power Purchase Agreements (PPAs), Tax Exempt Lease Purchases, On-Bill Financing (OBF), and low-interest State loans.

- **Tax Exempt Lease Purchases** – ENGIE issued a request for proposals (RFP) on behalf of the City for competitive financing proposals. Two banks responded with rates and terms summarized below. These proposals expired in early April, and ENGIE requested a refresh in early May. These updated rates have since expired but if the City desires to re-engage third-party lenders before the end of 2020, it is possible that the rates will not deviate significantly from the assumptions used in this analysis. ENGIE is happy to help the City engage third-party lenders as needed. As the table below indicates, we asked the banks to provide financing in two tranches: one for Bundle A measures assuming a 7-year term and one for Bundle B+C+D measures assuming a 15-20 year term.

Table 28. TELP Financing RFP Results

	Bundle A		Bundle B + C + D	
Financial Partner	**Bank #1**	**Bank #2**	**Bank #1**	**Bank #2**
Financed Amount	$8,310,000	$8,310,000	$19,896,000	$19,896,000
Construction Period (months)	15	15	15	15
Term (years) and Rate				
7	1.998%	2.250%		
15			2.280%	2.430%
17			2.374%	2.540%
20 minus construction			2.489%	
20 plus construction				2.930%
Payments	fixed payments or step payments			

- **Power Purchase Agreement (PPA)** – A PPA is an energy purchase contract for electricity produced by on-site distributed generation (PV and/or BESS). The generating equipment would be owned and maintained by ENGIE or a third-party, and the City agrees to purchase electricity at a set rate that would cost less than purchasing from the Utility. A PPA generally utilizes tax benefits to enhance the cost structure, and contract terms are generally available on 20-year or longer with possible early buyout provisions, paid on a monthly basis.
  - The City currently has a 20-year Power Purchase Agreement through which it has been receiving solar power at several sites for almost 10 years. The PPA contains a base rate of between $0.185 and $0.20 per kWh (varying by site) and an annual price escalation of 3% - 4%. The PPA contains buyout provisions that would allow the City to purchase the generating equipment (10 years after the PPA effective date), potentially resulting in significant cost savings for the City. Additionally, owning these systems would give the City the flexibility to make component modifications, such as upgrading inverters to more modern models that are compatible with microgrid controls, or upgrading under-canopy lighting to LEDs. While ENGIE cannot provide advice on such a transaction, we can assist in identifying financing options, provide technical assistance, and provide ongoing monitoring, operations, and maintenance to optimize the systems' output and financial benefits.

- **On-Bill Financing (OBF)** – Like other Investor Owned Utilities (IOUs) in CA, PG&E offers zero-interest 10-year loans for efficiency measures through its on-bill finance program. At this point, the efficiency measures specified by ENGIE for Milpitas would not qualify, but we will continue to monitor the program qualifications.
- **California Energy Commission ECAA Loan** – A rolling loan program from the CEC that provides low-interest 1% loans for cities to complete energy efficiency projects. Maximum loan amount is $3,000,000 or available funding, whichever is less, and applications are accepted on a rolling basis.
- It is ENGIE's understanding that the City may use some of its allocated capital funding to pay for certain pieces of the program, including the SCADA upgrades, AMI water meters, and potentially streetlighting retrofits.

5.3. Optimized Comprehensive Package

The CEA identified approximately $50MM of efficiency, water, and renewable energy measures across the City that would yield projected gross-savings of over $109 million over 30 years and net-savings of over $50 MM after deducting all financing costs and capital contributions. We understand that the City may want to take a phased approach in implementation. Please note that measures interact with one another, and once the City selects their preferred measures to move forward with, ENGIE should study how the final mix impacts the original, all-inclusive, designs, making adjustments as necessary to maximize City benefits. For example, removing efficiency measures would increase a building's consumption, which could impact solar and battery sizing and savings; similarly, if batteries are not selected, the solar systems could be re-designed with more efficient and cost-effective inverters that do not meet the microgrid control requirements.

Below in Table 30 we provide an optimized package of measures that maximizes net savings in Year 1 of the program and fit the aforementioned feasibility criteria: technically viable, critical need, or good financial payback. We have also grouped the measures by bundle and provided proformas for each.

Some highlights of this optimized group of measures:

- Leverages high-savings, quick-payback measures like interior and exterior lighting, solar, and water meters.
- Excludes addition of new lighting at Dixon Landing, as it will require an extensive environmental review and does not provide any savings. We recommend including this in a future Phase.
- Includes the best-payback and most critical battery systems, at Public Works, which gets the highest SGIP incentive and provides resiliency for the Police Department, as well as at the Community Center and Senior Center, which receive lower SGIP incentives but provide critical City services.
- Excludes replacement of duct work at the Community Center due to high costs and no associated savings.
- Includes SCADA, Pumping, and Automated Dosing measures due to non-quantifiable benefits, City demand, and already-allocated budget.
- ENGIE continues auditing and engineering Pressure Reducing Valves (PRVs) and pumping stations to include these upgrades through the allowance indicated under the SCADA ECM.

ENGIE is happy to work to with the City to determine a phased approach for implementation of the measures. For example, **Group I** could include Bundles A, B, and part of C (C1), which includes measures that have already been allocated capital (i.e. water meters and SCADA upgrades) or which

have critical City needs, and after that work has been underway for a few months, implement **Group 2** which would include Bundle C2, and D. Please note the cost estimates include current labor and material rates, as well as economies of scale under the assumption that several scopes will be simultaneously installed by ENGIE, while a phased approach might incur some additional remobilization costs. This approach can be implemented with one Energy Services Contract using two Notices to Proceed (NTPs), one to initiate each Group of measures. We look forward to working with the City to determine the best overall approach.

Table 29. Optimized Energy Program by Bundle

	Group 1								Group 2				
Bundle	A			B				C1	C2		D		
Description	Facilities Water Retrofits	Water Meters Upgrades	SCADA	LED Lighting Retrofits (interior / exterior at facilities)	LED Park Lighting	LED Streetlights	LED Sports Lighting	Solar PV, Battery Storage/ Resiliency	Solar PV + EV Chargers	Battery Storage/ Resiliency	High Efficiency Transformers	HVAC Upgrades	EMS Upgrades
City Hall				x					x		x	x	
Public Works, Vehicle Shop / Corp yard, Police Department				x					x*	x*	x	x	x
Community Center				x				x				x	
Senior Center				x				x[×]				x	
Sports Center Complex				x					x		x	x	
Library Parking Garage				x									
Fire Station No.1, Main Fire Admin, Fire training Center				x								x	
Fire Station No. 3				x								x	
Fire Station No. 4				x								x	
Pumping Stations			x	x									
PRVs			o										
City-wide	x	x	x		x	x	x[+]						
Costs (MM)	$0.70	$12.50	$7.36	$1.88	$0.49	$2.95	$1.55	$4.46	$5.12	$1.68	$0.33	$2.18	$0.44
Allowance (MM)		$0.25	$1.80										
CIP Funding (MM)		$8.99	$9.10										
Energy/Water Savings (MM)	$0.03	$0.68	$0.15	$0.24	$0.04	$0.32	$0.01	$0.08	$0.22	$0.01	$0.02	$0.01	
O&M Savings (MM)	$0.00	$0.42	$0.04	$0.08	$0.01	$0.05	$0.00					$0.08	$0.01
Incentives (MM)		$1.09						$0.88		$0.57			
Simple Payback	23	11	N/A	6	10	8	N/A	45	23	79	14	25	55

Legend:
Costs include capitalized guarantee and O&M
x = Included in price
o = Not included in price, to be handled within contract allowance
* = To be moved to Group 1 if Equity SGIP incentive gets funded from the waitlist
[×] = EV chargers included at Senior Center only
[+] = Sports lighting retrofits included for Cardoza Park (Baseball and Softball) and Hall Memorial Park (Soccer)

Tables 31-36, below, include a series of proformas for the above optimized package of measures shown several different ways:

- Bundles A+B+C+D with all O&M savings
- Bundle A with all O&M savings
- Bundle B Lighting without labor savings
- Bundle C1 Resiliency
- Bundle C2 Resiliency
- Bundle D Infrastructure

Table 30. Proforma for Bundles A+B+C+D

Including water meter O&M savings

Year	Solar Electricity Produced (kWh)	Solar Avoided Electric Rate ($/kWh)	Solar Electricity Savings	Solar O&M Costs	Solar M&V Costs	Solar O&M and M&V Costs	Net Solar Project Savings	Energy Conservation Savings	Energy Storage Savings	SGIP and SVCE Funds	Water Meter Incentive	Water O&M Costs	Streetlighting Controls O&M Costs	EV Charging Network Costs	Capital Infusion	O&M Savings	Total Program Savings	Estimated Lease Payment	Project Net Benefit	Cumulative Program Savings
	A	B	C = A * B	D	E	F = D + E	G = C - F	H	I	J	K	L	M	N	O	P	Q=G+H+I+J+K-L-M-N+O+P	R	S = Q - R	T
1	1,910,911	$0.157	$299,937			$0	$299,937	$1,503,214	$13,691	$813,052	$155,970	$49,674	$0		$2,880,000	$596,517	$6,212,707	$4,746,444	$1,466,262	$1,466,262
2	1,901,356	$0.164	$311,867			$0	$311,867	$1,570,859	$13,537	$75,000	$155,970	$49,674	$0		$2,030,000	$613,165	$4,720,724	$3,254,461	$1,466,262	$2,932,525
3	1,891,850	$0.171	$324,271			$0	$324,271	$1,641,547	$13,504	$75,000	$155,970	$49,674	$0			$630,312	$2,790,930	$1,324,668	$1,466,262	$4,398,787
4	1,882,390	$0.179	$337,169			$0	$337,169	$1,715,417	$13,607	$75,000	$155,970	$51,164	$0			$647,973	$2,893,972	$1,427,710	$1,466,262	$5,865,049
5	1,872,978	$0.187	$350,580			$0	$350,580	$1,792,611	$14,044	$75,000	$155,970	$52,699	$0			$666,164	$3,001,670	$1,535,408	$1,466,262	$7,331,311
6	1,863,614	$0.196	$364,524	$51,740	$10,385	$62,125	$302,399	$1,873,278	$14,493		$155,970	$54,280	$0	$30,100		$684,901	$2,946,661	$1,510,499	$1,436,162	$8,767,474
7	1,854,296	$0.204	$379,023	$53,292	$10,697	$63,989	$315,034	$1,957,576	$14,953		$155,970	$55,909	$0			$704,200	$3,091,825	$1,625,563	$1,466,262	$10,233,736
8	1,845,024	$0.214	$394,099	$54,891	$11,017	$65,908	$328,190	$2,045,667	$15,426			$57,586	$0			$724,078	$3,055,775	$1,589,513	$1,466,262	$11,699,998
9	1,835,799	$0.223	$409,774	$56,538	$11,348	$67,886	$341,888	$2,137,722	$15,910			$59,313	$0			$744,553	$3,180,760	$1,714,497	$1,466,262	$13,166,260
10	1,826,620	$0.233	$426,073	$58,234	$11,688	$69,922	$356,151	$2,233,919	$16,408			$61,093	$0			$765,641	$3,311,026	$1,844,764	$1,466,262	$14,632,523
11	1,817,487	$0.244	$443,020	$59,981	$12,039	$72,020	$371,000	$2,334,445	$16,003			$62,926	$44,530			$787,363	$3,401,355	$1,979,623	$1,421,732	$16,054,255
12	1,808,399	$0.255	$460,641	$61,780	$12,400	$74,180	$386,460	$2,439,495	$16,723			$64,813	$44,530			$809,735	$3,543,071	$2,121,339	$1,421,732	$17,475,987
13	1,799,357	$0.266	$478,963	$63,634	$12,772	$76,406	$402,557	$2,549,273	$17,476			$66,758	$44,530			$832,779	$3,690,797	$2,269,065	$1,421,732	$18,897,719
14	1,790,361	$0.278	$498,014	$65,543	$13,155	$78,698	$419,316	$2,663,990	$18,262			$68,760	$44,530			$856,515	$3,844,792	$2,423,060	$1,421,732	$20,319,452
15	1,781,409	$0.291	$517,822	$67,509	$13,550	$81,059	$436,763	$2,783,870	$19,084			$70,823	$44,530			$880,962	$4,005,326	$2,583,593	$1,421,732	$21,741,184
16	1,772,502	$0.304	$538,419	$69,534	$13,957	$83,491	$454,928	$2,909,144	$19,943			$72,948	$44,530			$906,143	$4,172,679	$2,750,947	$1,421,732	$23,162,916
17	1,763,639	$0.317	$559,834	$71,620	$14,375	$85,996	$473,839	$3,040,055	$20,840			$75,136	$44,530			$932,079	$4,347,147	$2,925,415	$1,421,732	$24,584,648
18	1,754,821	$0.332	$582,102	$73,769	$14,807	$88,575	$493,526	$3,176,858	$21,778			$77,390	$44,530			$958,794	$4,529,035		$4,529,035	$29,113,683
19	1,746,047	$0.347	$605,255	$75,982	$15,251	$91,233	$514,022	$3,319,816	$22,758			$79,712	$44,530			$986,310	$4,718,663		$4,718,663	$33,832,347
20	1,737,317	$0.362	$629,329	$78,261	$15,708	$93,970	$535,359	$3,469,208	$23,782			$82,104	$44,530			$1,014,651	$4,916,366		$4,916,366	$38,748,713
21	1,728,630	$0.379	$654,360	$80,609	$16,179	$96,789	$557,571	$3,536,002				$84,567	$44,530			$878,872	$4,843,349		$4,843,349	$43,592,062
22	1,719,987	$0.396	$680,387	$83,028	$16,665	$99,692	$580,695	$3,695,122				$87,104	$44,530			$903,990	$5,048,174		$5,048,174	$48,640,236
23	1,711,387	$0.413	$707,450	$85,518	$17,165	$102,683	$604,767	$3,861,403				$89,717	$44,530			$929,862	$5,261,785		$5,261,785	$53,902,021
24	1,702,830	$0.432	$735,589	$88,084	$17,680	$105,764	$629,825	$4,035,166				$92,408	$44,530			$956,510	$5,484,562		$5,484,562	$59,386,583
25	1,694,316	$0.451	$764,847	$90,726	$18,210	$108,937	$655,910	$3,383,371				$95,181	$44,530			$887,242	$4,786,813		$4,786,813	$64,173,397
26	1,685,844	$0.472	$795,268	$93,448	$18,756	$112,205	$683,064	$511,588								$41,600	$1,236,252		$1,236,252	$65,409,648
27	1,677,415	$0.493	$826,900	$96,252	$19,319	$115,571	$711,329	$534,610								$41,600	$1,287,539		$1,287,539	$66,697,187
28	1,669,028	$0.515	$859,790	$99,139	$19,899	$119,038	$740,752	$558,667								$41,600	$1,341,019		$1,341,019	$68,038,207
29	1,660,683	$0.538	$893,988	$102,113	$20,496	$122,609	$771,379	$583,807								$41,600	$1,396,786		$1,396,786	$69,434,993
30	1,652,380	$0.563	$929,547	$105,177	$21,111	$126,287	$803,259	$610,078								$41,600	$1,454,938		$1,454,938	$70,889,930
Total	**53,358,677**		**$16,758,839**			**$2,265,032**	**$14,493,808**	**$68,467,776**	**$342,220**	**$1,113,052**	**$1,091,790**	**$1,711,413**	**$667,950**	**$30,100**	**$4,910,000**	**$20,507,315**	**$108,516,498**	**$37,626,567**	**$70,889,930**	
																		Outlay	$18,825,124	
																		Net Benefit	$52,064,806	
																		NPV	$27,150,362	

Table 31. Proforma for Bundle A – Water meters and SCADA, Including water meter O&M savings

Year	Solar Electricity Produced (kWh)	Solar Avoided Electric Rate ($/kWh)	Solar Electricity Savings	Energy Conservation Savings	Water Meter Incentive	Water O&M Costs	Capital Infusion	Water Meters O&M Savings	SCADA O&M Savings	Total Program Savings	Estimated Lease Payment	Project Net Benefit	Cumulative Program Savings
	A	B	C = A * B	D	E	F	G	H	I	J = D+E+G+H+I-F	K	L = J - K	M
1	-	$0.000	$0	$859,765	$155,970	$49,674	$2,880,000	$417,090	$41,600	$4,304,751	$3,372,083	$932,668	$932,668
2	-	$0.000	$0	$898,454	$155,970	$49,674	$2,030,000	$429,603	$41,600	$3,505,953	$2,573,285	$932,668	$1,865,336
3	-	$0.000	$0	$938,885	$155,970	$49,674		$442,491	$41,600	$1,529,272	$596,604	$932,668	$2,798,004
4	-	$0.000	$0	$981,135	$155,970	$51,164		$455,766	$41,600	$1,583,306	$650,638	$932,668	$3,730,672
5	-	$0.000	$0	$1,025,286	$155,970	$52,699		$469,438	$41,600	$1,639,595	$706,927	$932,668	$4,663,340
6	-	$0.000	$0	$1,071,424	$155,970	$54,280		$483,522	$41,600	$1,698,235	$765,567	$932,668	$5,596,007
7	-	$0.000	$0	$1,119,638	$155,970	$55,909		$498,027	$41,600	$1,759,326	$826,659	$932,668	$6,528,675
8	-	$0.000	$0	$1,170,021		$57,586		$512,968	$41,600	$1,667,004		$1,667,004	$8,195,679
9	-	$0.000	$0	$1,222,672		$59,313		$528,357	$41,600	$1,733,316		$1,733,316	$9,928,995
10	-	$0.000	$0	$1,277,693		$61,093		$544,208	$41,600	$1,802,408		$1,802,408	$11,731,403
11	-	$0.000	$0	$1,335,189		$62,926		$560,534	$41,600	$1,874,397		$1,874,397	$13,605,800
12	-	$0.000	$0	$1,395,272		$64,813		$577,350	$41,600	$1,949,409		$1,949,409	$15,555,209
13	-	$0.000	$0	$1,458,060		$66,758		$594,671	$41,600	$2,027,572		$2,027,572	$17,582,782
14	-	$0.000	$0	$1,523,672		$68,760		$612,511	$41,600	$2,109,022		$2,109,022	$19,691,804
15	-	$0.000	$0	$1,592,237		$70,823		$630,886	$41,600	$2,193,900		$2,193,900	$21,885,704
16	-	$0.000	$0	$1,663,888		$72,948		$649,813	$41,600	$2,282,353		$2,282,353	$24,168,057
17	-	$0.000	$0	$1,738,763		$75,136		$669,307	$41,600	$2,374,534		$2,374,534	$26,542,591
18	-	$0.000	$0	$1,817,007		$77,390		$689,386	$41,600	$2,470,603		$2,470,603	$29,013,194
19	-	$0.000	$0	$1,898,773		$79,712		$710,068	$41,600	$2,570,728		$2,570,728	$31,583,922
20	-	$0.000	$0	$1,984,218		$82,104		$731,370	$41,600	$2,675,084		$2,675,084	$34,259,006
21	-	$0.000	$0	$1,998,064		$84,567		$751,342	$41,600	$2,706,440		$2,706,440	$36,965,446
22	-	$0.000	$0	$2,087,977		$87,104		$773,883	$41,600	$2,816,356		$2,816,356	$39,781,802
23	-	$0.000	$0	$2,181,936		$89,717		$797,099	$41,600	$2,930,918		$2,930,918	$42,712,720
24	-	$0.000	$0	$2,280,123		$92,408		$821,012	$41,600	$3,050,327		$3,050,327	$45,763,047
25	-	$0.000	$0	$2,382,729		$95,181		$845,642	$41,600	$3,174,790		$3,174,790	$48,937,837
26	-	$0.000	$0	$440,633					$41,600	$482,233		$482,233	$49,420,070
27	-	$0.000	$0	$460,461					$41,600	$502,061		$502,061	$49,922,131
28	-	$0.000	$0	$481,182					$41,600	$522,782		$522,782	$50,444,913
29	-	$0.000	$0	$502,835					$41,600	$544,435		$544,435	$50,989,348
30	-	$0.000	$0	$525,463					$41,600	$567,063		$567,063	$51,556,411
Total	-		**$0**	**$40,313,454**	**$1,091,790**		**$4,910,000**	**$15,196,343**	**$1,248,000**	**$61,048,174**	**$9,491,763**	**$51,556,411**	
											Outlay	$18,825,124	
											Net Benefit	$32,731,287	
											NPV	$15,926,652	

Table 32. Bundle B – Lighting
Excludes any labor savings

Year	Solar Electricity Produced (kWh)	Solar Avoided Electric Rate ($/kWh)	Solar Electricity Savings	Solar O&M and M&V Costs	Energy Conservation Savings	O&M Savings	Streetlighting Controls O&M Costs	Total Program Savings	Estimated Lease Payment	Project Net Benefit	Cumulative Program Savings
	A	B	C = A * B	D	E	F	G	H = C+E+F-D-G	I	J = H - I	K
1	-	$0.000	$0	$0	$614,086	$47,577	$0	$661,663	$246,634	$415,029	$415,029
2	-	$0.000	$0	$0	$641,720	$49,005	$0	$690,725	$275,695	$415,029	$830,058
3	-	$0.000	$0	$0	$670,597	$50,475	$0	$721,072	$306,043	$415,029	$1,245,088
4	-	$0.000	$0	$0	$700,774	$51,989	$0	$752,763	$337,734	$415,029	$1,660,117
5	-	$0.000	$0	$0	$732,309	$53,549	$0	$785,858	$370,829	$415,029	$2,075,146
6	-	$0.000	$0	$0	$765,263	$55,155	$0	$820,418	$405,389	$415,029	$2,490,175
7	-	$0.000	$0	$0	$799,700	$56,810	$0	$856,510	$441,480	$415,029	$2,905,204
8	-	$0.000	$0	$0	$835,686	$58,514	$0	$894,200	$479,171	$415,029	$3,320,234
9	-	$0.000	$0	$0	$873,292	$60,270	$0	$933,562	$518,532	$415,029	$3,735,263
10	-	$0.000	$0	$0	$912,590	$62,078	$0	$974,668	$559,639	$415,029	$4,150,292
11	-	$0.000	$0	$0	$953,657	$63,940	$44,530	$973,067	$602,568	$370,499	$4,520,791
12	-	$0.000	$0	$0	$996,571	$65,858	$44,530	$1,017,900	$647,400	$370,499	$4,891,290
13	-	$0.000	$0	$0	$1,041,417	$67,834	$44,530	$1,064,721	$694,222	$370,499	$5,261,790
14	-	$0.000	$0	$0	$1,088,281	$69,869	$44,530	$1,113,620	$743,121	$370,499	$5,632,289
15	-	$0.000	$0	$0	$1,137,253	$71,965	$44,530	$1,164,688	$794,189	$370,499	$6,002,788
16	-	$0.000	$0	$0	$1,188,430	$74,124	$44,530	$1,218,024	$847,525	$370,499	$6,373,287
17	-	$0.000	$0	$0	$1,241,909	$76,348	$44,530	$1,273,727	$903,228	$370,499	$6,743,786
18	-	$0.000	$0	$0	$1,297,795	$78,638	$44,530	$1,331,903		$1,331,903	$8,075,690
19	-	$0.000	$0	$0	$1,356,196	$80,997	$44,530	$1,392,663		$1,392,663	$9,468,353
20	-	$0.000	$0	$0	$1,417,225	$83,427	$44,530	$1,456,122		$1,456,122	$10,924,475
21	-	$0.000	$0	$0	$1,481,000	$0	$44,530	$1,436,470		$1,436,470	$12,360,945
22	-	$0.000	$0	$0	$1,547,645	$0	$44,530	$1,503,115		$1,503,115	$13,864,059
23	-	$0.000	$0	$0	$1,617,289	$0	$44,530	$1,572,759		$1,572,759	$15,436,818
24	-	$0.000	$0	$0	$1,690,067	$0	$44,530	$1,645,537		$1,645,537	$17,082,355
25	-	$0.000	$0	$0	$1,766,120	$0	$44,530	$1,721,590		$1,721,590	$18,803,945
26	-	$0.000	$0	$0	$0			$0		$0	$18,803,945
27	-	$0.000	$0	$0	$0			$0		$0	$18,803,945
28	-	$0.000	$0	$0	$0			$0		$0	$18,803,945
29	-	$0.000	$0	$0	$0			$0		$0	$18,803,945
30	-	$0.000	$0	$0	$0			$0		$0	$18,803,945
Total	-		**$0**	**$0**	**$25,600,752**	**$1,278,422**		**$27,977,344**	**$9,173,399**	**$18,803,945**	

Table 33. Bundle C1 – Resiliency at Senior Center and Community Center

Year	Solar Electricity Produced (kWh)	Solar Avoided Electric Rate ($/kWh)	Solar Electricity Savings	Solar O&M Costs	Solar M&V Costs	Solar O&M and M&V Costs	Net Solar Project Savings	Energy Conservation Savings	Energy Storage Savings	SGIP and SVCE Funds	EV Charging Network Costs	Total Program Savings	Estimated Lease Payment	Project Net Benefit	Cumulative Program Savings
	A	B	C = A * B	D	E	F = D + E	G = C - F	H	I	J	L	M = G+H+I+J-L	N	O = M - N	P
1	335,539	$0.236	$79,312			$0	$79,312	$0	$625	$727,622		$807,559	$982,944	($175,385)	($175,385)
2	333,861	$0.247	$82,467			$0	$82,467	$0	$618	$18,000		$101,085	$276,470	($175,385)	($350,771)
3	332,192	$0.258	$85,747			$0	$85,747	$0	$616	$18,000		$104,363	$279,749	($175,385)	($526,156)
4	330,531	$0.270	$89,157			$0	$89,157	$0	$621	$18,000		$107,779	$283,164	($175,385)	($701,542)
5	328,878	$0.282	$92,704			$0	$92,704	$0	$641	$18,000		$111,345	$286,730	($175,385)	($876,927)
6	327,234	$0.295	$96,391	$9,675	$1,942	$11,617	$84,774	$0	$662		$6,400	$79,035	$260,821	($181,785)	($1,058,713)
7	325,598	$0.308	$100,225	$9,965	$2,000	$11,966	$88,259	$0	$683			$88,942	$264,327	($175,385)	($1,234,098)
8	323,970	$0.322	$104,211	$10,264	$2,060	$12,324	$91,887	$0	$704			$92,591	$267,976	($175,385)	($1,409,483)
9	322,350	$0.336	$108,356	$10,572	$2,122	$12,694	$95,662	$0	$726			$96,388	$271,774	($175,385)	($1,584,869)
10	320,738	$0.351	$112,666	$10,889	$2,186	$13,075	$99,591	$0	$749			$100,340	$275,726	($175,385)	($1,760,254)
11	319,135	$0.367	$117,147	$11,216	$2,251	$13,467	$103,680	$0	$731			$104,411	$279,796	($175,385)	($1,935,640)
12	317,539	$0.384	$121,807	$11,552	$2,319	$13,871	$107,936	$0	$763			$108,699	$284,085	($175,385)	($2,111,025)
13	315,951	$0.401	$126,652	$11,899	$2,388	$14,287	$112,364	$0	$798			$113,162	$288,548	($175,385)	($2,286,411)
14	314,371	$0.419	$131,689	$12,256	$2,460	$14,716	$116,973	$0	$834			$117,807	$293,192	($175,385)	($2,461,796)
15	312,800	$0.438	$136,927	$12,624	$2,534	$15,158	$121,770	$0	$871			$122,641	$298,026	($175,385)	($2,637,181)
16	311,236	$0.457	$142,374	$13,002	$2,610	$15,612	$126,761	$0	$910			$127,672	$303,057	($175,385)	($2,812,567)
17	309,679	$0.478	$148,037	$13,392	$2,688	$16,081	$131,956	$0	$951			$132,907	$308,293	($175,385)	($2,987,952)
18	308,131	$0.500	$153,925	$13,794	$2,769	$16,563	$137,362	$0	$994			$138,356		$138,356	($2,849,596)
19	306,590	$0.522	$160,047	$14,208	$2,852	$17,060	$142,987	$0	$1,039			$144,026		$144,026	($2,705,570)
20	305,057	$0.546	$166,413	$14,634	$2,937	$17,572	$148,841	$0	$1,086			$149,927		$149,927	($2,555,643)
21	303,532	$0.570	$173,032	$15,073	$3,026	$18,099	$154,933	$0				$154,933		$154,933	($2,400,710)
22	302,014	$0.596	$179,914	$15,526	$3,116	$18,642	$161,272	$0				$161,272		$161,272	($2,239,438)
23	300,504	$0.623	$187,070	$15,991	$3,210	$19,201	$167,869	$0				$167,869		$167,869	($2,071,569)
24	299,002	$0.651	$194,511	$16,471	$3,306	$19,777	$174,734	$0				$174,734		$174,734	($1,896,835)
25	297,507	$0.680	$202,248	$16,965	$3,405	$20,370	$181,877	$0				$181,877		$181,877	($1,714,957)
26	296,019	$0.710	$210,292	$17,474	$3,507	$20,982	$189,311	$0				$189,311		$189,311	($1,525,647)
27	294,539	$0.742	$218,657	$17,998	$3,613	$21,611	$197,046	$0				$197,046		$197,046	($1,328,601)
28	293,067	$0.776	$227,354	$18,538	$3,721	$22,259	$205,094	$0				$205,094		$205,094	($1,123,507)
29	291,601	$0.811	$236,397	$19,094	$3,833	$22,927	$213,470	$0				$213,470		$213,470	($910,037)
30	290,143	$0.847	$245,799	$19,667	$3,948	$23,615	$222,184	$0				$222,184		$222,184	($687,853)
Total	**9,369,310**		**$4,431,528**			**$423,547**	**$4,007,981**	**$0**	**$15,623**	**$799,622**	**$6,400**	**$4,816,826**	**$5,504,679**	**($687,853)**	
													Outlay	$0	
													Net Benefit	($687,853)	
													NPV	($1,094,259)	

Table 34. Bundle C2 – Resiliency at City Hall, Sports Center, Public Works

Year	Solar Electricity Produced (kWh)	Solar Avoided Electric Rate ($/kWh)	Solar Electricity Savings	Solar O&M Costs	Solar M&V Costs	Solar O&M and M&V Costs	Net Solar Project Savings	Energy Storage Savings	SGIP Rebate	EV Charging Network Costs	Total Program Savings	Estimated Lease Payment	Project Net Benefit	Cumulative Program Savings
	A	B	C = A * B	D	E	F = D + E	G = C - F	I	J	L	M = G+H+I+J-L	N	O = M - N	P
1	1,449,910	$0.150	$217,453			$0	$217,453	$14,049	$85,430		$308,132	$517,322	($209,190)	($209,190)
2	1,442,660	$0.157	$226,102			$0	$226,102	$13,892	$57,000		$292,254	$497,384	($205,130)	($414,320)
3	1,435,447	$0.164	$235,095			$0	$235,095	$13,857	$57,000		$301,213	$506,343	($205,130)	($619,451)
4	1,428,270	$0.171	$244,446			$0	$244,446	$13,964	$57,000		$310,670	$515,800	($205,130)	($824,581)
5	1,421,129	$0.179	$254,169			$0	$254,169	$14,412	$57,000		$320,841	$525,971	($205,130)	($1,029,711)
6	1,414,023	$0.187	$264,279	$42,064	$8,443	$50,507	$213,772	$14,872		$23,700	$228,644	$429,034	($200,390)	($1,230,101)
7	1,406,953	$0.195	$274,790	$43,326	$8,696	$52,022	$222,768	$15,345			$238,113	$438,503	($200,390)	($1,430,492)
8	1,399,918	$0.204	$285,720	$44,626	$8,957	$53,583	$232,138	$15,830			$247,967	$448,357	($200,390)	($1,630,882)
9	1,392,918	$0.213	$297,085	$45,964	$9,226	$55,190	$241,895	$16,327			$258,222	$458,612	($200,390)	($1,831,272)
10	1,385,954	$0.223	$308,901	$47,343	$9,503	$56,846	$252,055	$16,837			$268,893	$469,283	($200,390)	($2,031,662)
11	1,379,024	$0.233	$321,188	$48,764	$9,788	$58,551	$262,637	$16,422			$279,059	$479,449	($200,390)	($2,232,052)
12	1,372,129	$0.243	$333,963	$50,227	$10,081	$60,308	$273,655	$17,161			$290,816	$491,206	($200,390)	($2,432,443)
13	1,365,268	$0.254	$347,246	$51,733	$10,384	$62,117	$285,129	$17,933			$303,063	$503,453	($200,390)	($2,632,833)
14	1,358,442	$0.266	$361,058	$53,285	$10,695	$63,981	$297,078	$18,740			$315,818	$516,208	($200,390)	($2,833,223)
15	1,351,650	$0.278	$375,419	$54,884	$11,016	$65,900	$309,519	$19,583			$329,103	$529,493	($200,390)	($3,033,613)
16	1,344,892	$0.290	$390,352	$56,530	$11,347	$67,877	$322,475	$20,465			$342,939	$543,330	($200,390)	($3,234,004)
17	1,338,167	$0.303	$405,878	$58,226	$11,687	$69,913	$335,965	$21,386			$357,350	$557,740	($200,390)	($3,434,394)
18	1,331,476	$0.317	$422,022	$59,973	$12,038	$72,011	$350,011	$22,348			$372,359		$372,359	($3,062,035)
19	1,324,819	$0.331	$438,808	$61,772	$12,399	$74,171	$364,637	$23,354			$387,990		$387,990	($2,674,045)
20	1,318,195	$0.346	$456,261	$63,625	$12,771	$76,396	$379,865	$24,405			$404,270		$404,270	($2,269,775)
21	1,311,604	$0.362	$474,409	$65,534	$13,154	$78,688	$395,721				$395,721		$395,721	($1,874,054)
22	1,305,046	$0.378	$493,279	$67,500	$13,548	$81,049	$412,230				$412,230		$412,230	($1,461,824)
23	1,298,521	$0.395	$512,899	$69,525	$13,955	$83,480	$429,419				$429,419		$429,419	($1,032,406)
24	1,292,028	$0.413	$533,299	$71,611	$14,373	$85,984	$447,315				$447,315		$447,315	($585,091)
25	1,285,568	$0.431	$554,511	$73,759	$14,805	$88,564	$465,947				$465,947		$465,947	($119,144)
26	1,279,140	$0.451	$576,567	$75,972	$15,249	$91,221	$485,346				$485,346		$485,346	$366,202
27	1,272,744	$0.471	$599,500	$78,251	$15,706	$93,958	$505,542				$505,542		$505,542	$871,744
28	1,266,381	$0.492	$623,345	$80,599	$16,177	$96,776	$526,569				$526,569		$526,569	$1,398,313
29	1,260,049	$0.514	$648,138	$83,017	$16,663	$99,680	$548,459				$548,459		$548,459	$1,946,772
30	1,253,748	$0.538	$673,918	$85,507	$17,163	$102,670	$571,248				$571,248		$571,248	$2,518,020
Total	**40,486,071**		**$12,150,101**	**1,533,621**	**$307,821**	**$1,841,441**	**$10,308,660**	**$351,179**	**$313,430**	**$27,760**	**$10,945,509**	**$8,427,489**	**$2,518,020**	
												Outlay	$0	
												Net Benefit	$2,518,020	
												NPV	$783,865	

Table 35. Bundle D – Building Systems Upgrades

Year	Solar Electricity Produced (kWh)	Solar Avoided Electric Rate ($/kWh)	Solar Electricity Savings	Energy Conservation Savings	High Efficiency Transformers	HVAC Upgrades	O&M Savings	Total Program Savings	Estimated Lease Payment	Project Net Benefit	Cumulative Program Savings
	A	B	C = A * B	F	F1	F2	I	K= F+I	L	M = K - L	N
1	-	$0.000	$0	$29,363	$23,609	$5,754	$90,250	$119,613	$186,437	($66,824)	($66,824)
2	-	$0.000	$0	$30,684	$24,671	$6,013	$92,958	$123,642	$190,466	($66,824)	($133,649)
3	-	$0.000	$0	$32,065	$25,782	$6,284	$95,746	$127,811	$194,636	($66,824)	($200,473)
4	-	$0.000	$0	$33,508	$26,942	$6,566	$98,619	$132,127	$198,951	($66,824)	($267,297)
5	-	$0.000	$0	$35,016	$28,154	$6,862	$101,577	$136,593	$203,417	($66,824)	($334,121)
6	-	$0.000	$0	$36,592	$29,421	$7,171	$104,624	$141,216	$208,040	($66,824)	($400,946)
7	-	$0.000	$0	$38,238	$30,745	$7,493	$107,763	$146,001	$212,826	($66,824)	($467,770)
8	-	$0.000	$0	$39,959	$32,129	$7,830	$110,996	$150,955	$217,779	($66,824)	($534,594)
9	-	$0.000	$0	$41,757	$33,574	$8,183	$114,326	$156,083	$222,907	($66,824)	($601,419)
10	-	$0.000	$0	$43,636	$35,085	$8,551	$117,756	$161,392	$228,216	($66,824)	($668,243)
11	-	$0.000	$0	$45,600	$36,664	$8,936	$121,288	$166,888	$233,713	($66,824)	($735,067)
12	-	$0.000	$0	$47,652	$38,314	$9,338	$124,927	$172,579	$239,403	($66,824)	($801,891)
13	-	$0.000	$0	$49,796	$40,038	$9,758	$128,675	$178,471	$245,295	($66,824)	($868,716)
14	-	$0.000	$0	$52,037	$41,840	$10,197	$132,535	$184,572	$251,396	($66,824)	($935,540)
15	-	$0.000	$0	$54,379	$43,723	$10,656	$136,511	$190,890	$257,714	($66,824)	($1,002,364)
16	-	$0.000	$0	$56,826	$45,690	$11,136	$140,607	$197,432	$264,257	($66,824)	($1,069,188)
17	-	$0.000	$0	$59,383	$47,746	$11,637	$144,825	$204,208	$271,032	($66,824)	($1,136,013)
18	-	$0.000	$0	$62,055	$49,895	$12,160	$149,169	$211,225		$211,225	($924,788)
19	-	$0.000	$0	$64,848	$52,140	$12,708	$153,645	$218,492		$218,492	($706,296)
20	-	$0.000	$0	$67,766	$54,486	$13,279	$158,254	$226,020		$226,020	($480,276)
21	-	$0.000	$0	$56,938	$56,938			$56,938		$56,938	($423,338)
22	-	$0.000	$0	$59,500	$59,500			$59,500		$59,500	($363,838)
23	-	$0.000	$0	$62,178	$62,178			$62,178		$62,178	($301,660)
24	-	$0.000	$0	$64,976	$64,976			$64,976		$64,976	($236,684)
25	-	$0.000	$0	$67,900	$67,900			$67,900		$67,900	($168,784)
26	-	$0.000	$0	$70,955	$70,955			$70,955		$70,955	($97,829)
27	-	$0.000	$0	$74,148	$74,148			$74,148		$74,148	($23,681)
28	-	$0.000	$0	$77,485	$77,485			$77,485		$77,485	$53,804
29	-	$0.000	$0	$80,972	$80,972			$80,972		$80,972	$134,776
30	-	$0.000	$0	$84,616	$84,616			$84,616		$84,616	$219,392
Total	-		**$0**	**$1,620,827**	**$1,440,316**	**$180,511**	**$2,425,051**	**$4,045,878**	**$3,826,487**	**$219,392**	**$0**
									Outlay	$0	
									Net Benefit	$219,392	
									NPV	($135,901)	

6. Proposed Construction Schedule

ENGIE is committed to begin construction as soon as possible, following the completion of final engineering and City approval. Material procurement and construction will be coordinated and scheduled to cause the least impact possible on City staff and citizens, while maintaining steady progress towards final completion. ENGIE is committed to working as quickly as possible and will also make any required schedule adjustments to meet the needs of the City.

All projects that require permitting will be permitted by the Authority Having Jurisdiction – City of Milpitas. Solar PV systems installed in parking lots will also be reviewed by the fire department to ensure fire trucks can maintain proper ingress and egress to each site.

The final project schedule will depend on the mix of measures selected by the City for implementation.

Table 36. Preliminary Implementation Schedule

Milestones	Estimated Date
Contract approval and NTP issued	October 2020
Final engineering and design	Q4 2020
Drawing sets issued for City permits	Q4 2020 / Q1 2021
Equipment procurement	Q4 2020 / Q1 2021
Construction starts	Q4 2020
Construction complete, ribbon cutting celebration	Q4 2022

7. Additional Program Features

7.1. Continuous Monitoring Pilot

ENGIE offers Continuous Monitoring (CM) services that aim to increase the maintenance and operational efficiency of the City's existing facilities, systems, and critical equipment through real-time monitoring and remote support. Our CM services include hardware, software, and a team of building system analysts that remotely manage City facility systems through data collection, advanced analytics, and vendor management of any required work orders. When a system anomaly is registered, our team will triage the situation and take corrective action to reset controls, open a ticket with Public Works maintenance staff, and/or dispatch a service provider to fix the problem. Further, over time with the analysis of data, we start to incorporate predictive analytics to inform maintenance schedules, prevent failures, and plan replacements. The goal of CM is to save the City time and resources while optimizing energy, maintenance, and operational efficiency.

While we have not designed or priced a CM solution for the City at this time, we propose offering a no-cost pilot for 60-90 days. Such a pilot would collect sufficient data to inform the potential savings and ongoing costs of a CM solution. The pilot would involve tying into the City's EMS system and any additional lighting, SCADA, or mechanical controls, in addition to the potential installation of submeters. The CM solution from ENGIE would be designed to maximize savings and minimize maintenance costs – our expectation is that if the City elects to implement a CM solution, it will more than pay for itself.

Please note that a Continuous Monitoring pilot would be distinct from any ongoing measurement and verification related to the performance guarantee of new equipment and measures outlined in Section 8 of this CEA.

7.2. Community Outreach Program

At ENGIE, we value the positive impact we have on the communities in which we work. We measure Impact not only by the savings we generate and emissions we offset but also by the number of community members we engage and inspire. Our ENGIE Community Impact team – comprised of former educators and outreach experts – is dedicated to building comprehensive energy programs that deliver valuable, high-quality, and engaging resources for communities. Through conversations with key stakeholders at the City, we have developed a plan for community engagement and outreach alongside the energy and water measures that the City chooses to implement. Below are the goals we hope to help the City achieve and some specific initiatives we look forward to incorporating into the partnership.

7.2.1. Goals

- Provide greater **capacity for City-wide resiliency initiatives** that will in turn support the City's Climate Action Goals
- Promote **enhanced environmental awareness and stewardship** among City residents
- Garner recognition for the City as a **sustainability and resiliency leader**

7.2.2. Initiatives

- Sponsor a CivicSpark Fellow for the September 2020-August 2021 Fellowship Year. The City has already received confirmation that it has been selected as a host for a CivicSpark Fellow

- Create and participate in City Events, including Earth Day and an inaugural Public Works Biking Tour
- Provide support from our Communications Team on augmenting use of Social Media for residential engagement
- Empower the Public Works Team to communicate real-time updates through a one-stop Sustainable Milpitas Webpage with real-time energy data from the City's infrastructure upgrades, conversions of the data into dollars saved and other metrics, and tips on how residents can go green
- Communicate sustainability leadership by organizing Groundbreaking Celebrations and identifying potential Sustainability Awards

8. Guarantee and Monitoring

8.1. Overview

To give the City peace of mind that the proposed measures will deliver on the promised savings throughout the years, ENGIE offers an industry-leading savings and performance guarantee.

For any energy services performance contracting program, an appropriate Measure and Verification (M&V) plan is key to success. To assure confidence in these processes, ENGIE follows the International Performance Measurement and Verification Protocol (IPMVP). The National Association of Energy Service Companies (NAESCO) recognizes this protocol as the standard guideline of how savings resulting from energy conservation projects should be measured. ENGIE M&V professionals will work with the City of Milpitas to develop a tailored M&V plan in accordance with IPMVP guidelines. The IPMVP options are categorized in Figure 15 below.

Figure 15. IPMVP Options

	Option A	Option B	Option C	Option D
Savings Calculation	**Engineering Calculations:** Short-term or continuous post-retrofit measurements	**Engineering Calculations:** Short-term or continuous measurements	**Analysis of Whole Facility:** Utility meter/sub-meter data	**Energy Use Simulation:** Calibrated with hourly or monthly utility billing data of end-use metering
Example Application	Measure power draw periodically for a lighting retrofit.	Apply controls to vary the load on a constant speed pump using a variable speed drive. A kWh meter is installed to measure actual energy use of the drive.	Multifacted energy management program affecting many systems in a building. Measure energy use via gas and electric utility meters for a 12 month base-year period and throughout the post-retrofit period.	Multifacted energy management program affecting many systems in a building, but where no base year data is available. Measure post-retrofit energy use by utility meters and base year energy use is determined by simulation using a calibrated model.

ENGIE guarantees performance by establishing a baseline energy use, predicting the savings reduction by using industry established building modeling and calculations, and monitoring and verifying the energy reduction throughout the guarantee. Our goal is to select a straightforward M&V approach that can be easily verified by the City and/or their third-party reviewer.

8.2. Description of Monitoring Services Available to Ensure Continued Savings

ENGIE has one of the largest, most experienced M&V teams in the industry. A Certified Measurement and Verification Professional (CMVP) with more than 25 years in performance contracting leads a team of full-time dedicated staff, with seven certified staff members, and an average time in performance contracting of over 15 years each. The team has overseen hundreds of guarantees and currently has more than 130 clients with ongoing guarantees. The team has one of the highest success rates in the industry — 109% for the most recently reconciled year — for achieving our guaranteed performance on projects. If project performance does not meet or exceed our guaranteed performance, ENGIE writes the customer a check for the difference, without delay or hassle. This outstanding monitoring department sets ENGIE apart from other companies that engage in performance-based energy programs.

Our M&V team has extensive expertise in commissioning, monitoring, and troubleshooting over 16 different types of energy management control systems. Not only is this team responsible for delivering a functional system, they also continue to train and support our customers on that system for the duration of the contract.

8.2.1. "Energy Intelligent" M&V

ENGIE uses a proprietary web-based system, Utilityvision™, to monitor data acquired from our energy projects. As a standard, we provide monthly value reports from Utilityvision that we customize based on project and customer needs. Administrative personnel can use Utilityvision to create summary reports, while facility managers can set alarms and run trend analysis diagrams with the click of a button.

Figure 16. Utilityvision Overview screen

Figure 17. Utilityvision Performance Graph

8.3. Proposed Guarantee for the City of Milpitas

The exact scope for monitoring will be determined based on City direction, and tailored to the final energy measures selected for implementation. For the measures identified in this CEA, ENGIE recommends Option A for lighting, high-efficiency transformers, and water meters; and Option B for solar. The standard guarantee we propose will guarantees 95% of calculated energy and water savings. Those measures have significant savings and can greatly benefit from concrete yet cost-effective monitoring.

In general, the other measures yield smaller savings or are not as cost-effective to monitor and guarantee, and therefore a stipulated guarantee is proposed based on agreed-upon equipment efficiency improvements (such as HVAC and water fixtures) or reduced operating hours (such as pumping

improvements associated with the SCADA scope). Measures without any associated energy or water savings (such as EV chargers and EMS upgrades) do not have or require a savings guarantee. Additionally, the real purpose of BESS is community resiliency and not energy savings, so a Resiliency Services package is proposed instead of a traditional guarantee for this measure. This will support optimal microgrid functionality, maintaining all its different components, and providing monitoring of facility loads and post-outage analysis of system performance.

8.3.1. Option A: Lighting, Transformer Upgrades, and Water Meters

Lighting, transformers, and water meters are ideal measures for Option A. For lighting and transformers, measuring power drawn by the equipment (pre- and post-retrofit) can quickly and accurately determine existing and new consumption, proving the energy savings achieved by the measures. In the case of water meters, measuring the existing and new meters' recording accuracy helps quantify the improvements achieved and the associated revenue increases.

Please note that for lighting, ENGIE is proposing Option A only for facilities interior and exterior retrofits. Streetlights, parks and sports lighting pose a safety challenge when it comes to multiple measurements, due to their height and difficult access. Sports lighting savings are not significant enough to warrant a guarantee, and since all of the City's streetlights are in unmetered PG&E rates, there is no need to verify actual consumption. PG&E bills are simply based on the wattages provided to the utility, and ENGIE will ensure that PG&E receives all the documentation required to correctly update their billing post-retrofit, effectively securing those savings for the City.

8.3.2. Option B: Solar

For solar projects, ENGIE can monitor real time performance of the new equipment installed. New meters, cellular connections, and other monitoring components are put in place, allowing us real-time access to verify energy consumption of each facility, as well as solar production and battery use. This data is all stored and available to both the ENGIE monitoring team and the customer, on the Utilityvision™ platform. ENGIE monitoring experts work closely with customer staff, to ensure the appropriate stakeholders have the access they need, and customize templates and reports to make the process as easy as possible. ENGIE also compiles customer monthly and annual reports with this data, providing transparent feedback on the systems' performance.

Additionally, this real-time data and access is invaluable for our Operation & Maintenance (O&M) team, which is responsible for ensuring the systems are performing as designed. Any alarms come straight to our team, allowing them to quickly troubleshoot and dispatch technicians on site as needed, to minimize any system down time. The O&M team is also responsible for scheduled maintenance, such as verifying electrical components and washing panels every year, to ensure systems are producing at peak performance. The O&M team can also assist with unplanned outage management, contractor management, site safety management, and any insurance claims.

8.3.3. Summary

The table below summarized the guarantee options proposed by ENGIE for the City of Milpitas.

Table 40. Guarantee Summary

	Bundle A			Bundle B				Bundle C			Bundle D		
Description	**Facilities Water Retrofits**	**Water Meters Upgrades**	**SCADA**	**LED Lighting Retrofits (Interior/Exterior for Facilities)**	**LED Park Lighting**	**LED Streetlights**	**LED Sports Lighting**	**Solar PV**	**EV Chargers**	**Battery Storage/ Resiliency**	**High Efficiency Transformers**	**HVAC Upgrades**	**EMS Upgrades**
Energy/Water Savings (MM)	$0.031	$0.682	$0.147	$0.240	$0.038	$0.324	$0.012	$0.289		$0.015	$0.024	$0.006	
5-Yr Guarantee Included in Sell Price	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes			Yes	Yes	
IPMVP Option	Stipulated	A	Stipulated	A	Stipulated	Stipulated	Stipulated	B			A	Stipulated	
Guaranteed Amount (95%)	$0.029	$0.648	$0.140	$0.228	$0.036	$0.308	$0.011	$0.275			$0.023	$0.006	

9. Conclusion

ENGIE has performed a thorough audit of City facilities to fully assess opportunities for energy and water savings. This report detailed the measures identified and recommended, with associated energy, water, and operation and maintenance savings. The City has an opportunity to build on their sustainability and environmental stewardship, reducing the impact of their operations on the environment while leveraging significant savings to their general fund and engaging with the community.

ENGIE can work with City staff to select the final mix of measures for implementation, bundling them in different groups as needed. ENGIE has also identified several funding options, including City funds earmarked for some of these measures, utility incentives, and cost-effective TELPs, for the City to consider when deciding how to fund their selected paid-through-savings project.

ENGIE is proud to serve as a partner to the City of Milpitas, and looks forward to putting the findings of this report into action, helping create a more efficient and sustainable Milpitas.

10. Appendix A – Other Measures Considered

In this section, we include measures that were identified in the preliminary CEA as feasible but later dropped out of the scope due to technical, economic, or other reasons. While we no longer recommend the measures below, we would like the City to have the information and analysis in case future conditions merit their consideration.

PG&E's Renewable Energy Self-Generation Bill Credit Transfer (RES-BCT) program allows a local government with one or more eligible renewable generating facilities to export energy to the grid and receive generation credits, which benefit other program accounts. This would allow the City to install larger solar PV systems in areas that can fit these bigger designs, even though they do not have the current load to reap the full systems' benefits. This strategy takes advantage of larger systems to offset multiple smaller accounts where on-site solar may not feasible or cost effective.

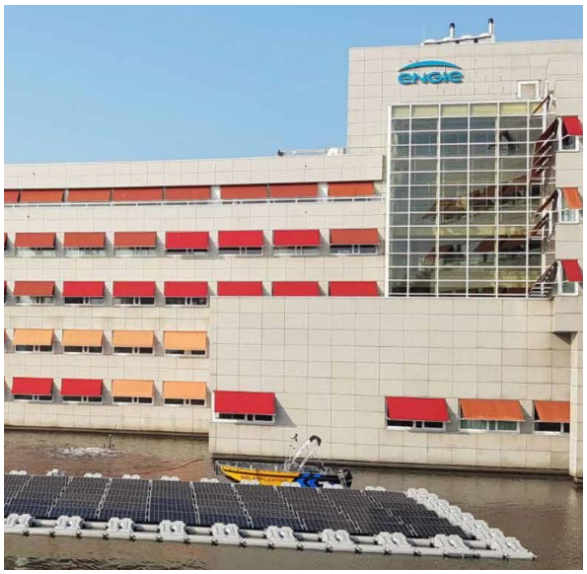
The PG&E RES-BCT program has a cap of 105.25 megawatts (MW), and once that cap is met, no more applications will be accepted. If the City is interested in pursuing these options, ENGIE can work closely with PG&E to attempt to secure the City a spot in the program.

ENGIE identified three potential sites for RES-CT. The first two sites were to install floating solar PV at two City of Milpitas Parks, Hidden Lake, and Hall Memorial. The last site identified was solar PV on the top level of the Milpitas Library parking garage.

10.1. Floating Solar PV

An innovative technology identified as an option for the City of Milpitas was floating solar PV. These systems are installed in bodies of water, on floating platforms that support the PV systems with all their components, as well as multiple people walking down the rows at the same time for any maintenance purposes. The systems are anchored to the bank or the bottom of the reservoir for security. This is an emerging technology, with 120 farms already installed across the world totaling 235 MW, and 80 more MW of ongoing projects in development.

Figure 18. Photo of 26 kW floating solar PV system installed



10.1.1. Floating Solar Benefits

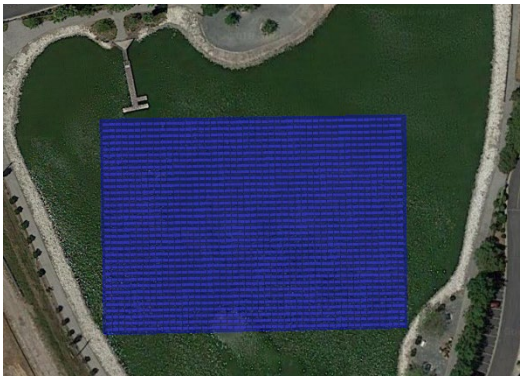
- Cost effective and easy to install
- The system conserves water by reducing evaporation, preserving existing ecosystems
- Shading from the panels limits algae growth, improving water quality
- No risks to wildlife and surrounding habitats
- Natural cooling effect of the body of water allows the solar modules to operate more efficiently, producing more power than traditional ground-mounted systems

Two potential locations were identified for the City of Milpitas: Hidden Lake and Hall Memorial Parks, with preliminary layouts shown below. Site considerations include

- Effect on the current use of the ponds, if any boating or swimming is currently allowed
- Public access and vandalism – the systems may require fencing or a floating barrier protection, surveillance cameras, and heavy signage
- Permitting issues

Based on feedback from City staff, this measure is not recommended at this time.

Hidden Lake Park (approximately 600 kW)



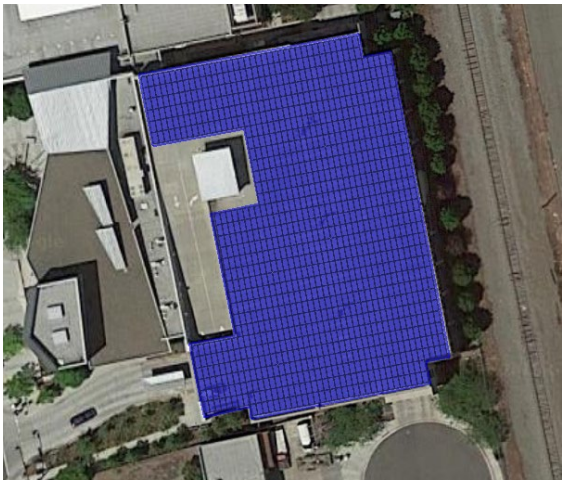
Hall Memorial Park (approximately 300 kW)

10.2. Library Parking Garage Solar PV

Another option for the City was to take advantage of the top floor of the City Library Garage to install a full coverage solar PV system as shown on the layout below. This system would provide shade for the entire top floor of the parking structure, producing more energy than what is required to offset the site's electrical consumption. Options for export include both RES-BCT, as well as Net Energy Metering Aggregation (NEM-A) tariffs. The NEM-A rate allows adjacent parcels to export excess generation to one another, while still realizing the full value of the energy savings, while on the RES-BCT rate, customers only save the generation portion since the utility still needs to distribute the renewable energy from one site to another. The City might be able to export savings to the adjacent County Library and earn revenue from the extra production. There may also be an option to provide some of this generation to the local Community Choice Aggregator (CCA).

After further investigation of existing as-built drawings, site audits, and City permitting requirements, ENGIE identified several limitations with the design. Structural upgrades might be required in the garage structure to withstand the added weight, permitting requirements significantly reduce the footprint that can be covered and used for energy production, and costly electrical upgrades would be required both on the customer and the utility side to account for the system load. Ultimately, the City of Milpitas decided to not move forward with Solar PV on the library parking garage, since it would not be cost effective. The initial design that was proposed is outlined below.

Library Parking Garage (approximately 470 kW)



A summary of all proposed sites and associated estimated benefits are shown below.

Table 371. Additional Solar Photovoltaic Summary

Site	Proposed System Type	Preliminary System Size (kW DC)	Estimated First Year kWh Generated	Estimated First Year Solar Savings	Interconnection Type
Library Parking Garage	Full Coverage Canopy	470	750,000	$95,000	RES-BCT or NEM-A
Hidden Lake Park	Floating Solar	600	990,000	$115,000	RES-BCT
Hall Memorial Park	Floating Solar	300	450,000	$60,000	RES-BCT

4020 Moorpark Avenue, Suite 100
San Jose, CA 95117
www.engieservices.us

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FIRST AMENDED AND RESTATED ENERGY SERVICES AGREEMENT

Between

CITY OF MILPITAS
(as "Owner")

and

ENGIE SERVICES U.S. INC.
(as "Contractor")

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COVER PAGE

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

ENGIE Services, U.S. **Inc.** **("Contractor")**	City of Milpitas **("Owner")**
Attn: Mariana de Brito	Attn: Tony Ndah
4020 Moorpark Avenue, Suite 100	1265 N. Milpitas Blvd.
San Jose, CA 95117	Milpitas, CA 95035
Phone No.: 415-825-0149	Phone No.: 408-586-2602
FAX No.: <fax>	FAX No.: 408-586-2608
Email Address: mariana.debrito@engie.com	Email Address: tndah@ci.milpitas.ca.gov

A. The "**Effective Date**":	B. The **"Completion Date"**:
October 6, 2020	ECMs 1 and 2: 635 calendar days from NTP ECM 3: 710 calendar days from NTP ECMs 4, 5, 6 and 7: 420 calendar days from NTP ECMs 8, 9, and 10: 690 calendar days from NTP
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 *(state license classification(s))*:	
995037	
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: $150,000 Phase 2 in the total amount of: $33,798,429	F. **"LD Rate"** (see Section 4.52(xxxx)): ECMs 1 and 2 combined: $200/day aggregate for all sites ECM 3: $100/day aggregate for all sites ECMs 4, 5, 6, 7 combined: $200/day aggregate for all sites ECMs 8, 9, 10 combined: $100/day aggregate for all sites
	G. **"Utility"**: Silicon Valley Clean Energy Pacific Gas & Electric Association of Bay Area Governments Power
G. Contractor Required Insurance**:**	
See Section 2.22(cccc)	
H. **"Project Sites" or "Sites"***:*	
See Section 1.2	

FIRST AMENDED AND RESTATED ENERGY SERVICES AGREEMENT

This First Amended and Restated 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 Delaware corporation 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 2.23(hhhh).

"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 3.33.

"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 2.23(eeee)(xvii).

"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 2.20 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 6.56.

"**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 4.46(qqqq)(xxxv).

"Final Completion Certificate" has the meaning set forth in Section 4.46(qqqq)(xxxv).

"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 4.52(xxxx).

"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 4.52(xxxx).

"**Notice to Proceed"** shall have the meaning set forth in Section 4.46(pppp).

"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 3.36.

"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 3.36(nnnn)(xxvi) 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 4.46.

"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.

"Scope of Work" shall mean the scope of the Work set forth in Section 2.3 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 A. 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 4.46(qqqq)(xxxiii).

"Superintendent" shall have the meaning set forth in Section 2.6(g).

"**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 2.22.

"Warranty Period" shall have the meaning set forth in Section 2.22(zzz) .

"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

2.3 Scope of Work

2.3.1 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.

2.3.2 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.

2.4 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.

2.5 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.

2.6 Contractor Personnel

(f) 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.

(g) 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.

(h) 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.

(i) 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.

(j) 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.

(k) 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.

(l) 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.

(m) 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.

(n) 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.

(o) 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.

(p) 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.

2.7 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.

2.8 Subcontractors and Other Contracts for Portions of the Work

(q) 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.

(r) 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 6.56 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.

2.9 Supply and Procurement of Equipment

(s) 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.

(t) 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.

(u) 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.

2.10 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.

2.11 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.

2.12 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.

2.13 Permits and Approvals

(v) Contractor shall obtain, maintain and pay for all Governmental Approvals and licenses and utility interconnection application fees 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.

(w) 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.

(x) 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.

2.14 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:

(y) 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.

(z) 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.

(aa) 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. If it is determined that there was no error or omission on the part of Contractor, Contractor shall not be liable for the cost of the additional professional services.

(bb) 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 and any associated shipping/delivery costs, 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.

(cc) 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.

(dd) 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.

(ee) 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.

(ff) 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.

2.15 Local and General Conditions

(gg) 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.

(hh) 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.

(ii) 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.

(jj) Reserved.

(kk) When required by the Scope of Work or otherwise required to satisfy Section (gg)2.15(gg), 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.

(ll) 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.

(mm) 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.

2.16 Safety Precautions and Programs

(nn) 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.

(oo) 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.

(pp) 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.

(qq) 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.

(rr) 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.

(ss) 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.

(tt) 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.

(uu) 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.

2.17 **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:

(vv) 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.

(ww) 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.

(xx) 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.

(yy) 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.

(zz) 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.

(aaa) 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.

2.18 **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 4.52 and requested in accordance with Section 2.20. 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.

2.19 **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.

2.20 <u>Changes and Extra Work</u>

(bbb) 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.

(ccc) 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:

(iv) 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;

(v) 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

(vi) 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.

(ddd) 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.

(eee) Reserved.

(fff) 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.

(ggg) 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).

(hhh) 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.

(iii) 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.

(jjj) 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.

(kkk) 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 2.18 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.

(lll) 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).

(mmm)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 Contractor's and its Subcontractor's actual cost of material and labor and markup, which markup shall not exceed the markup limit established below. 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.

(nnn) 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.

(ooo) 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.

(ppp) 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 2.20(mmm). 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.

2.21 System Manuals and Drawings

(qqq) 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.

(rrr) 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.

(sss) 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.

(ttt) 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.

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

(vvv) 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.

2.22 Warranties

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

(vii) 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.

(viii) 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.

(ix) 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;

(xxx) 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).

(yyy) Independent Warranties. Contractor's Warranties under Section 2.22(www) 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.

(zzz) Warranty Period. Contractor shall remedy any breach of the Warranties set forth in this Section 2.22(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").

(aaaa) Remedies

(x) If any Warranty set forth in Section 2.22(www) 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.

(xi) 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 it agent's (other than Contractor or any Subcontractor) negligence or willful misconduct.

(bbbb) 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 2.22(aaaa)), 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.

(cccc) 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.

(dddd) 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.

2.23 Insurance

(eeee) 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:

(xii) *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, five Million Dollars ($5,000,000) personal and advertising injury aggregate, with a per occurrence limit of five Million Dollars ($5,000,000) (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;

(xiii) *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 $2,000,000 per accident for combined bodily injury and property damage and containing appropriate no-fault insurance provisions or other endorsements in accordance with Applicable Law;

(xiv) *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.

(xv) *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.

(xvi) *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.

(xvii) *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.

(xviii) *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.

(ffff) 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.

(gggg) 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.

(hhhh) 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.

(iiii) 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.

(jjjj) 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.

(kkkk) 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.

(llll) 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.

(mmmm) 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.

2.24 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.

2.25 **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.

2.26 **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

2.27 **Owner's Obligations**.

(a) Registration, Permits and Approvals.

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

(xx) 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.

(xxi) 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

3.28 **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 3.36, 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 2.20 for Change Orders and Section 6.62 for Claims.

3.29 **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.

3.30 **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.

3.31 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 3.36(oooo)(xxix).

3.32 Payment Schedule The Progress Payment Milestones defined in Section 3.36 shall be used as the basis for preparation of progress invoices. Subject to Section 3.36 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:

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

(xxiii) Following submittal of the supporting documentation required by Section 3.36 for the respective Progress Payment Milestones to the satisfaction of the Owner;

(xxiv) Following submittal of an Application for Payment; and

(xxv) Subject to Retention as provided in Section 0.

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

3.33 Application for Payment Except as provided in Section 3.32, 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.

3.34 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 3.35 within thirty (30) after the Application for Payment was properly submitted.

3.35 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.

3.36 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 3.32 and the Contract Documents (each, a "Progress Payment Milestone"):

(nnnn) Phase 1 Payment

(xxvi) 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").

(oooo) 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*.

(xxvii) Mobilization Payment: Twenty (20) percent of the Contract Price upon Contractor's mobilization.

(xxviii)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.

(xxix) Final Payment: to be paid 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

3.37 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.

3.38 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.

3.39 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.

3.40 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.

3.41 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.

3.42 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.

3.43 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.

3.44 **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

4.45 **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 4.46, 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.

4.46 **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:

(pppp) Phase 1

(xxx) 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.

(qqqq) 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.

(xxxi) 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 2.20. 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.

(xxxii) 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.

(xxxiii)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.

(xxxiv)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:

(5) 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;

(6) 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;

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

(8) Contractor has delivered to the Site the Spare Parts in accordance with Section **Error! Reference source not found.**; and

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

(xxxv) 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:

(10) 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

4.47 Hours of Work

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

(ssss) 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.

4.48 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 2.22(cccc) 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.

4.49 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.

4.50 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.

4.51 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 4.52(tttt), 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 3.36, 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 4.52(tttt), then the terms of Section 4.52 shall dictate.

4.52 Extensions of Time – Liquidated Damages

(tttt) 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.

(uuuu) 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 4.52(tttt) shall be an extension of the Project Schedule at no cost to the Owner.

(vvvv) 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 2.20.

(wwww) 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.

(xxxx) 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.

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.

4.53 **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).

4.54 **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 visually 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 visually 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

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

(yyyy) 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;

(zzzz) 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;

(aaaaa) 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;

(bbbbb) 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

6.56 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 2.6 or materials in accordance with Section 2.9; (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.

6.57 **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.

6.58 **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.

6.59 **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.

6.60 **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.

6.61 **Indemnification**

(ccccc) *Reserved.*

(ddddd) 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.

(eeeee)

6.62 **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 2.20, 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.

(c) Claims for Concealed or Unknown Conditions

(xxxvi) 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.

(xxxvii) 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:

(11) 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.

(12) 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.

(13) 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.

6.63 **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.

(fffff) 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.

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

(xxxviii) Summary of claim merit and price, reference Contract Document provisions pursuant to which the claim is made

(xxxix) List of documents relating to claim:

(14) Specifications
(15) Drawings
(16) Clarifications (Requests for Information)
(17) Schedules
(18) Other

(xl) Chronology of events and correspondence

(xli) Analysis of claim merit

(xlii) Analysis of claim cost

(xliii) Time impact analysis in CPM format

(hhhhh) 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.

(xliv) 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.

(xlv) 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.

(iiiii) 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.

(jjjjj) 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.

(xlvi) 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.

(xlvii) 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.

(xlviii) 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.

(xlix) 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.

(kkkkk) 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.

(lllll) Civil Actions The following procedures are established for all civil actions filed to resolve claims of $375,000 or less:

(l) 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.

(li) 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.

(mmmmm) 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.

(nnnnn) 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

7.64 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.

7.66 Ownership and Use of Drawings, Data, Reports and Other Documents

(ooooo) 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.

(ppppp) 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.

(qqqqq) 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.

(rrrrr) 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 of jurisdiction.

7.67 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.

7.68 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.

7.69 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.

7.70 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.

7.71 **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.

7.72 **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: City of Milpitas

1265 N. Milpitas Blvd., Milpitas, CA 95035
Attention: Tony Ndah, Public Works Director
Telephone: 408-586-2602
Facsimile: 408-586-2608
Email: tndah@ci.milpitas.ca.gov

with a copy to: City of Milpitas

455 E. Calaveras Blvd., Milpitas, CA 95035
Attention: Steven McHarris, City Manager
Telephone: 408-586-3059
Facsimile:
Email: smcharris@ci.milpitas.ca.gov

Contractor: ENGIE Services, U.S., Inc

4020 Moorpark Avenue, Suite 100, San Jose, CA 95117
Attention: Mariana de Brito, Sr. Project Manager
Telephone: 415-825-0149
Facsimile:
Email: mariana.debrito@engie.com

with a copy to: ENGIE Services, U.S., Inc

500 12th St., Suite 300, Oakland, CA 96704
Attention: Legal Department, Chris McCormick
Telephone: 415-351-9956
Facsimile:
Email: chris.mccormick@engie.com

7.73 **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.

7.74 **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.

7.75 **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.

7.76 **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.

7.77 **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 4.46, 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.

7.78 **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.

7.79 **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.

7.80 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.

7.81 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.

7.82 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.

7.83 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.

7.22 MUNICIPAL ADVISOR. THE PARTIES ACKNOWLEDGE AND AGREE THAT CONTRACTOR IS NOT A MUNICIPAL ADVISOR AND CANNOT GIVE ADVICE TO OWNER WITH RESPECT TO MUNICIPAL SECURITIES OR MUNICIPAL FINANCIAL PRODUCTS ABSENT OWNER BEING REPRESENTED BY, AND RELYING UPON THE ADVICE OF, AN INDEPENDENT REGISTERED MUNICIPAL ADVISOR. CONTRACTOR IS NOT SUBJECT TO A FIDUCIARY DUTY WITH REGARD TO OWNER OR THE PROVISION OF INFORMATION TO OWNER. OWNER WILL CONSULT WITH AN INDEPENDENT REGISTERED MUNICIPAL ADVISOR ABOUT THE FINANCING OPTION APPROPRIATE FOR OWNER'S SITUATION.

7.23 FINANCE CONTINGENCY. It is acknowledged and agreed by the Parties that the continued existence of this Agreement is expressly contingent upon Owner securing financing that will allow it to make the payments to Contractor required by this Agreement. Owner will have thirty (30) calendar days after the Effective Date to secure such financing. If the financing is not secured within this time, for any reason, either Party may by written notice to the other Party declare this Agreement to be null and void; and the Agreement will be null and void as of the other Party's receipt of this notice; *provided* that Owner may not declare this Agreement to be null and void after it has issued the Notice to Proceed. It is acknowledged and agreed that Contractor will have no obligation to commence performance of the Work unless and until the financing has been closed.

7.24 PROOF OF FINANCIAL ARRANGEMENTS. Prior to the commencement of the work, Owner will provide Contractor proof that financial arrangements have been made to fulfill Owner's obligations under this Agreement. Owner's requirement to furnish such proof to Contractor is a condition precedent to commencement of the work. After commencement of the work, Contractor may request such proof if (i) Owner fails to make payments to Contractor as this Agreement requires; (ii) a Change in the work materially changes the Contract Price; or (iii) Contractor has other reasonable concerns regarding Owner's ability to fulfill its payment obligations under this Agreement when due. Owner will furnish such proof as a condition precedent to commencement or continuation of the work or the portion of the work affected by a material change. If after Owner furnishes such proof, Owner wishes to materially vary such financial arrangements, Gustine will notify Contractor prior to the change and will provide Contractor proof that the changed financial arrangements fulfill Owner's obligations under this Agreement. If Owner fails to provide Contractor with such proof within ten (10) calendar days of receiving a demand from Contractor, Contractor will be entitled to suspend its performance under this Agreement until such proof is received.

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:

Site Assessment Table

The table below summarizes the measures investigated and recommended for implementation. Phase 2 addresses and incorporates measures presented in Group 1. Group 2 measures may be selected to proceed, with a Change Order, at a later date.

	Group1								Group 2				
Bundle	A			B				C1	C2		D		
Description	ECM 1: Facilities Water Retrofits	ECM 2: Water Meters Upgrades	ECM 3: SCADA, Pumping and Water Treatment	ECM 4: LED Lighting Retrofits (interior / exterior at facilities)	ECM 5: LED Park Lighting	ECM 6: LED Streetlights	ECM 7: LED Sports Lighting	ECMs 8, 9 and 10: Solar PV, Battery Storage/ Resiliency	Solar PV + EV Chargers	Battery Storage/ Resiliency	High Efficiency Transformers	HVAC Upgrades	EMS Upgrades
City Hall				x					x		x	x	
Public Works Vehicle Shop / Corp yd. Police Department				x					x	x	x	x	x
Community Center				x				x				x	
Senior Center				x				x*				x	
Sports Center Complex				x					x		x	x	
Library Parking Garage				x									
Fire Station No.1 / Main Fire Admin Fire Training Center				x								x	
Fire Station No. 3				x								x	
Fire Station No. 4				x								x	
Pumping Stations			x	x									
Pressure Reducing Valves			o										
City-wide	x	x	x		x	x	x+						

Legend:
x = Included in base contract price
o = Not included in price, to be handled within contract allowance
* = EV chargers also included
+ = Sports lighting retrofits included for Cardoza Park (Baseball and Softball) and Hall Memorial Park (Soccer)

SCOPE OF WORK

California State Contractor's License Number 995037
California Public Works Contractor Registration Number 1000001498

Energy Conservation Measures to Be Implemented

ECM #	Description
1	Facilities Water Fixture Retrofits
2	Water Meter Upgrades
3	SCADA & Remote Communication, Pumping, and Automated Water Treatment
4	Facilities and Pumping Stations Lighting Upgrades
5	Parks Lighting Upgrades
6	Streetlighting Upgrades
7	Sports Lighting Upgrades
8	Solar Generating Facilities
9	Resiliency Microgrids
10	Electric Vehicle Charging Stations

ECM 1 – Facilities Water Fixture Retrofits

Scope of work includes retrofitting the water fixtures detailed in Exhibit Q, retrofitting existing fixtures with low-flow alternatives for water conservation purposes, and installing sensor/touchless technology for toilets, urinals and faucets where not yet present. Contractor to provide materials, labor, supervision, and coordination with Owner for the installation.

Exclusions:

- Sensors are excluded from locations where they are not practical, such as kitchen faucets used for full meal prep. Total counts per site included in this Scope of Work are detailed in Exhibit Q.
- A total of 31 existing fixtures (29 toilets and 2 urinals) are not being converted to sensor-flush in this Scope of Work. These are existing push-button hydraulic fixtures and the replacement/conversion to sensor-flush would be cost prohibitive.
- Broken toilet flanges.
- Broken carriers (for wall mount toilets and urinals).
- Failed angle stop valves or isolation valves. Contractor will require Owner's assistance in locating isolation valves prior to construction.
- Painting, tile work, and wall repair outside of footprint related patching. Pre-existing damage to walls or flooring will be brought to the attention of Owner. Contractor will repair any damages caused by installations and will attempt to match the existing conditions; but where unique tile or paint is present, Owner may be required to supply materials.
- Premium time or overtime labor. All work can be performed during normal working hours including evening shift from 3 PM to 12 AM.
- Hazardous material removal or abatement (including asbestos, lead paint, etc.).

- It is the Owner's responsibility to provide water pressure to all plumbing fixtures in the range of 25 to 85 psi. Deviations from this range will require installation of booster pumps or pressure reducing valves excluded from the Scope of Work.
- It is the Owner's responsibility to ensure that plumbing infrastructure flow capacity (i.e. the ability for the water supply to meet peak demands of water use) is adequate to support a high efficiency plumbing fixture retrofit. Additionally, liability for water hammer and other infrastructure related conditions are excluded from this Scope of Work. Should such conditions be identified or arise, Contractor will work with Owner to provide potential solutions that would require a Change Order to this Scope of Work.

ECM 2 – Water Meter Upgrades

The City of Milpitas has been deploying Badger Meters with ORION SE Fixed Network transmitters and currently uses Badger Meter's BEACON® Advanced Metering Analytics (AMA) software portfolio. Contractor shall convert remaining water meters (15,590 total) to the same Advanced Metering Infrastructure (AMI) system.

Detailed Scope of Work

1) For meters included in this Scope of Work, record existing water meter readings and other pertinent Meter/ Encoder Receiver Transmitters (ERT) readings (including meter serial number) prior to installation.
2) Remove each existing water meter identified in this Scope of Work and replace each with a new water meter and transmitter in the existing meter box.
3) Replace meter gaskets and bolts during installation.
4) For each location the new meter and register serial numbers will be recorded at the time of installation.
5) On a weekly basis, the new meter and register serial numbers will be submitted to the Owner.
6) The Owner will have two weeks to verify communication with the new registers. Any communication issues will be reported to Contractor on a weekly basis.
7) Deliver all removed water meters to the City of Milpitas Public Works Building.
8) The City of Milpitas has 36 existing active gateways installed throughout the City to collect data from the water meters. Given the estimated number of meters expected to connect to the footprint of the fixed network, it is expected that approximately 3,100 meters in more remote areas will require a cellular connection, which are included in Contractor's Scope of Work. The City of Milpitas also has 2 existing, inactive gateways, which are excluded from this Scope of Work. Scope of Work assumes that existing 36 active gateways and 3,100 new cellular connections will be sufficient to provide the required communications to Badger's Beacon AMA software, and no provisions are included for providing additional cellular connections, re-activating gateways, or installing new gateways.
9) Meters that have been recently upgraded and integrated into Badger's Beacon AMA portfolio are excluded from this Scope of Work.

Special Conditions

1) Owner will integrate new registers into existing City of Milpitas' billing data, as well as with the Badger Meter's BEACON® Advanced Metering Analytics (AMA) solution.
2) Report any field conditions to the Owner that warrant correction.
3) Owner to provide assistance in locating meters as required.
4) Owner to provide adequate personnel to assist in the shutting off of large meters, and/or where isolation valves are not functional. Any broken valves will be the responsibility of the Owner or billed separately within this ECM allowance.
5) Lines will be bled to remove air and debris through external building spigot. If there is no readily available spigot the line will not be bled and it will be the responsibility of the Owner to adequately bleed the system.
6) Owner will provide a clearly designated equipment and construction lay-down area at the Sports Center Complex for new and removed equipment and materials storage as well as for subcontractor trailers and supplies required to perform the Work.
7) Owner to advertise and notify their water customers of planned meter exchange. The Owner is to communicate overall timing of planned major water outages, to happen during standard working hours. Contractor will provide 3-day pre-installation notification to each resident, to be done with a door tag. At the time of installation, Contractor shall notify any residents on site or proceed if no one responds and meter is not in use, leaving a follow up door hanger to notify that work was completed.
8) Excess or removed soil from the meter boxes shall be spread evenly around the outside of the meter boxes.
9) Any water quality testing will be performed by the Owner.
10) Provision of access during normal working hours (7:00 am to 6:00 pm, Monday - Friday) to the Project sites, Public Works Building, and Sports Center Complex.
11) Owner will coordinate with any large-scale customers who require assistance with scheduled equipment shutdowns required for implementation of this Scope of Work, including stopping and restarting of existing equipment.
12) Owner will be responsible for any service-side line breaks during installation due to a deteriorating line or infrastructure.
13) Disposition of Hazardous Substances Laws will be the responsibility of the Owner regardless of such Hazardous Substances' acceptability for disposal at local area disposal/recycle facilities.

Exclusions

1) Yearly fees for fixed network, including receiver cell fees, internal and client website fees, and billing provider fees.
2) Any communication, paperwork, authorizations, and/or fees required by the California Department of Transportation (Cal Trans) will be the responsibility of the Owner.
3) Overtime or weekend work.
4) Removal of hazardous or contaminated materials or equipment, including removal and/or remediation of Hazardous Substances and contaminated soil required anywhere on Owner's property, including, but not limited to, removal, disposal, and backfill with clean soil, not caused by Contractor or any of its agents or subcontractors.
5) Removal of unknown interior and underground structures or debris.
6) Demolition and/or removal of existing structures.

7) Procurement of easements, zoning variances, encroachment permits, and legal authorizations regarding planning and site use, if any, required for the Project.
8) Installation of screening revisions, roof screens or additions, building enclosures, landscaping, visual, acoustic, or any other mitigation.
9) Production of an environmental impact report or acquisition of any environmental permits, other than those specifically identified in this Scope of Work.
10) Special inspections required by the Owner, other than those specifically identified above.
11) Provision and/or installation of water meters above and beyond the totals provided in the AMI System Equipment Quantities below. Water meter quantity and sizes will be verified prior to installation – if quantity or size of meters differ from table below, Contractor will provide price increase or reduction.
12) Scope of Work assumes that existing 36 active gateways and 3,100 new cellular connections will be sufficient to provide the required communications to Badger's Beacon AMA software, and no provisions are included for providing additional cellular connections, re-activating gateways, or installing new gateways.
13) Repair of major leaks, existing piping deficiencies, and other work not specifically identified.
14) Repair of curb valve(s) if identified as inoperable.
15) Repair or replacement of old or damaged service pipe on either side of the meter that extends outside the meter boxes (for small meters) or more than 18" from the meter (for large meter installations).
16) Locking meter box covers have not been included in this Project. Any requirements for locking lids will be the responsibility of the Owner.
17) If new meter box covers to do not fit correctly due to damaged box lip, the Owner will be responsible for repair of existing box.
18) Any (pre-cast or cast in place) concrete work (including lids and/or boxes).
19) It is assumed that any piping removed as part of the Work can be recycled without additional cleaning or flushing. Pipe/components requiring additional cleaning prior to recycling will be placed in on-site area designated by Owner.
20) Any lid replacements if broken, damaged, or needed for communication purposes, or any lid drilling to allow for antennas to communicate through lids.
21) Cleanout of meter boxes if required to perform work (e.g., when meters are buried in dirt and debris).
22) Dismantling and recycling of removed meters.

AMI System Equipment Quantities

Description	Specification	Register Specification	Quantity
5/8"	Badger Recordall Disc Series Meter	Orion SE Fixed Network Endpoint	12,295
3/4"	Badger Recordall Disc Series Meter	Orion SE Fixed Network Endpoint	544
1"	Badger Recordall Disc Series Meter	Orion SE Fixed Network Endpoint	1,281
1 1/2"	Badger Recordall Disc Series Meter	Orion SE Fixed Network Endpoint	535
2"	Badger Recordall Disc Series Meter	Orion SE Fixed Network Endpoint	738
3"	Badger Recordall Turbo Series Meter	Orion SE Fixed Network Endpoint	110
4"	Badger Recordall Turbo Series Meter	Orion SE Fixed Network Endpoint	60
6"	Badger Recordall Turbo Series Meter	Orion SE Fixed Network Endpoint	15
8"	Badger Recordall Turbo Series Meter	Orion SE Fixed Network Endpoint	12
Cellular Connection (Add-on)			3,100

Allowance

It is expected that unique situations will be encountered over the course of this retrofit, which will require additional work from the Contractor, including reconfiguration for new lay-lengths, adding bypass valves or strainers, replacing/modifying lids where needed, relocating transmitters, compound meter adjustments, repairs beyond 18" of meters, cleanout of buried meters, etc. To that extent, the contract includes a $250,000 (two hundred and fifty thousand dollars) allowance to account for such costs. If Owner directs Contractor to proceed with work exceeding allowance amount available, a Change Order will be required. Depending on the additional scope identified, schedule adjustments may be required.

At the end of every two weeks, Contractor will provide a list of all additional work completed during the two-week period. Owner will have three days to challenge any additional charges, after which Contractor will assume the charges are accepted. Any work that individually exceeds $2,000 will be requested and coordinated ahead of work commencing.

Some of these potential cost adders have been identified during the development phase, and are outlined below:

Additional Services and Pricing	Unit of Measure	Unit Price
Hourly Rate for additional work outside of standard scope of work (beyond fixed costs outlined below)	PER HOUR	$ 95
3" and 4" Spools	EACH	$ 250
6" and 8" Spools	EACH	$ 450
3" Strainer and Install	EACH	$ 750
4" Strainer and Install	EACH	$ 1,000
6" Strainer and Install	EACH	$ 1,200
Adder for Confined Space Entry Permits	EACH	$ 100
Bushing adapter install for 1"-3/4" services	EACH	$ 20
5/8"-3/4" Valve Replacement	EACH	$ 150
1" Valve Replacement	EACH	$ 200
Concrete Cutting and Restoration	PER SQFT	$ 175
Small Meter Box Replacement	EACH	$ 225
Large Meter Box Replacement	EACH	$ 650
Raise Small Meter Box (Soft Dig)	EACH	$ 50
Raise Large Meter Box (Soft Dig)	EACH	$ 100
Register Retrofit (Add-on)	EACH	$ 255
Cellular Connection (Add-on)	EACH	$ 45
Fibrelyte Meter Lid FL03	EACH	$ 35
Fibrelyte Meter Lid FL09	EACH	$ 40
Fibrelyte Meter Lid FL12	EACH	$ 70
Fibrelyte Meter Lid FL30	EACH	$ 115
Fibrelyte Meter Lid FL36	EACH	$ 200
Metal Lid Drilling	EACH	$ 20

Concrete Lid Drilling	EACH	$ 20

ECM 3 – SCADA & Remote Communication, Pumping, and Automated Water Treatment

Per Owner's request, this ECM Scope of Work is preliminary and shall be finalized in close coordination with City staff, to determine the systems and strategies that will best suit the City in the long-term. This section details the work completed by Contractor to date, along with Contractor recommendations which are currently included in the contract price. Details shall be finalized with the Owner during final engineering, hence the allowance included as described below.

SCADA System Upgrade & Remote Site Communication Scope of Work

Scope of Work includes 450 MHz RF communication upgrades to the following sites:

Data Aggregation Sites		Address	Server Location
Gibraltar Turnout (2 adjacent) + G Reservoir		641 Gibraltar Court, Milpitas, CA	Yes
Milpitas Public Works		1265 N Milpitas Blvd, Milpitas, CA	Yes
Pumping Stations	**Type**	**Address**	**Water Treatment**
Jurgens Storm Pump Station	Storm	345 Jurgens Drive, Milpitas, CA	No
Spence Creek Storm Pump Station	Storm	11 Butler Street, Milpitas, CA	No
Penitencia Storm Pump Station	Storm	944 La Honda Drive, Milpitas, CA	No
Milpitas Materials Storm Pump Station	Storm	1125 N.Milpitas Blvd, Milpitas, CA	No
Abbott Storm Pump Station	Storm	1225 N. Abbott, Milpitas, CA	No
California Circle Storm Pump Station	Storm	1735 California Circle, Milpitas, CA	No
Berryessa Storm Pump Station	Storm	731 Folsom Circle, Milpitas, CA	No
Murphy Ranch Storm Pump Station	Storm	801 Murphy Ranch Road, Milpitas, CA	No
Bellew Storm Pump Station	Storm	481 Murphy Ranch Road, Milpitas, CA	No
Oak Creek Storm Pump Station	Storm	1521 McCarthy Blvd, Milpitas, CA	No
PD Sump Storm Pump Station	Storm	1275 N. Milpitas Blvd, Milpitas, CA	No
Wrigley Ford Storm Pump Station	Storm	75 Marylinn Drive, Milpitas, CA	No
Manor Storm Pump Station	Storm	349 Marylinn Drive, Milpitas, CA	No
McCarthy Storm Pump Station	Storm	1001 N. McCarthy Blvd, Milpitas, CA	No
Main Sewer Pump Station	Sewer	1425 N. McCarthy Blvd, Milpitas, CA	No
Venus Way Sewer Pump Station	Sewer	1085 Venus Way, Milpitas, CA	No
Gibraltar Turnout (2 adjacent) + G Reservoir	Water	641 Gibraltar Court, Milpitas, CA	Yes

Ayer Reservoirs	Water	1429 E. Calaveras Blvd, Milpitas, CA	Yes
Tularcitos Pump Station	Water	1200 Tularcitos Drive, Milpitas, CA	Yes
Country Club Station	Water	1437 Country Club Drive, Milpitas, CA	Yes
Minnis Tank	Water	Launch Site Road, Milpitas, CA	Yes

During Phase 1, Contractor performed an analysis of current industry-leading SCADA software to determine the best fit for the Owner's needs. Based on the information discovered, Contractor is proposing the Ignition! software by Inductive Automation as a starting point for this design (included in this contract scope of work). Contractor will engage with Owner staff to verify that Ignition! is indeed the right fit for the City, or study the integration feasibility of any other preferred SCADA software as part of the additional work to be completed under this scope allowance. Project schedule includes 95 calendar days for Owner discussion and decision on software package. If any additional time is required for Owner to reach a final decision, Contractor will be granted an equivalent time extension.

Engineering & Design

1) Perform site follow-up survey
2) Review station pumping logic and develop pumping plan based on water quality:
    a. Evaluate whether electrical changes are necessary
    b. Evaluate whether mechanical piping changes are necessary
    c. Evaluate whether additional valves are needed
3) Chlorine Injection System (Liquid Sodium Hypochlorite) for Gibraltar, Ayer, Tularcitos and Minnis stations:
    a. Review Chlorine Injection design, checking for current code compliance
    b. Review Mechanical Drawings
    c. Review Electrical Drawings for any medium/high voltage electrical
4) Ammonia Injection System, Liquid Ammonium Sulfate (LAS) for Gibraltar, Ayer, Tularcitos and Minnis stations:
    a. Review LAS injection design, checking for current code compliance
    b. Review Mechanical Drawings
    c. Review Electrical Drawings for any medium/high voltage electrical
5) Review new instruments to be furnished:
    a. Perform engineering review and confirm proper wiring and power supplies:
        i. Flow Meter & Totalizer
        ii. New Monochloramine Meter
        iii. New Chlorine Residual Meter
6) Design Project Management:

a. Review of applicable codes and standards
b. Meeting with Owner to create 60% Design, 90% Design, and 100%/Final Design for:
    i. Overall SCADA Engineering Design (Level 1, SCADA Infrastructure)
    ii. Overall Water & Treatment Engineering Design (Level 1, Water & Water Treatment)
    iii. Overall Water & Treatment Engineering Design (Level 1, Stormwater)
    iv. Overall Water & Treatment Engineering Design (Level 1, Wastewater)
c. Develop Master Plan

SCADA Server Upgrades Products & Materials
For the Public Works Main Office and the Gibraltar Sites, the following items will be added between the two sites, with one of the workstations (item 3) being added to the Main Lift Station:

1) (1) Office Master Radio Repeater Remote Terminal Unit (RTU)
2) (2) Radio Towers
3) (1) SCADA Server
4) (3) SCADA Workstations
5) (1) SCADA Redundant Server
6) SCADA Software
7) Human Machine Interface (HMI) Development
8) System Redundancies
9) System Backup

Contractor will work with Owner to determine what the final design requirements are and where the various pieces of equipment should be located, as well as the best locations for each part of the SCADA infrastructure. If additional redundancy is needed, Contractor will work with the Owner to determine and price out the expanded scope as part of this scope allowance.

Water System Hardware Upgrades
1) Water Hillside System RTU upgrades at Country Club, Tularcitos, Minnis
2) Gibraltar Water Treatment PLC Hardware & Upgrades include:
    a. New HMI Platform & Upgrades
    b. Addition of HMI touch screen in pumping bay
    c. HMI Updates to support water system changes & pumping strategy
    d. Engine driven pump integration
3) Ayer Water Treatment New Programmable Logic Controller (PLC) Hardware & Upgrades include:
    a. New Allen Bradley Control Logix PLC system, utilize existing cabinet and wiring
    b. Remove old PLC, utilize existing terminations
        i. Update drawings as needed
        ii. Add any additional wiring needed
    c. Install new HMI touch screen
    d. New HMI & Programming

Stormwater System SCADA Hardware Upgrades

1) Provide for the fourteen (14) Stormwater Lift Stations:
    a. New ScadaPak PLC Systems
    b. New HMI Platform & Upgrades
    c. Addition of HMI touch screen in each pumping site
    d. RF Communication Hardware for Each Site
    e. HMI Updates to support water system changes & pumping strategy
    f. Engine driven pump integration
    g. Process Narrative
    h. Loop Diagrams
    i. P&ID's
    j. Electrical and Mechanical drawings
2) Provide control Upgrades for Wrigley Ford Generator, and Engine Driven Pumps at Berryessa (3), Penitencia (3), Bellew (1), Murphy Ranch (3), Oak Creek (3), McCarthy (3), Jurgens (4), and California Circle (3):
    a. Control Hardware & Design Services
    b. Installation & Startup
    c. New Engine Sensors if required
    d. SCADA Integration
    e. New Actuators for Speed Control if required at Jurgens and California Circle

Automated Water Treatment, Pumping Changes, Tank Mixing & Chloramine Dosing Control

Scope of Work includes:

1) Creation of 60/90/100% drawings, and review of applicable codes and standards.
2) Providing and installing the equipment and instrumentation outlined below, per quantities and locations shown.

Equipment	Gibraltar	Ayer	Tularcitos	Minnis/Hillside Tank
Water Softener	1	1	1	1
Brine Tank	1	1	1	1
Hypochlorite Generation System	1	1	1	1
Hypochlorite Storage Tank	1	1	1	1
Hydrogen Dilution Blower	1	1	1	1
Hypochlorite Dosing Assembly	1	1	1	1
Liquid Ammonium Sulfate Storage Tank	1	1	1	1
Liquid Ammonium Sulfate Dosing Assembly	1	1	1	1
Sample Feed Pump	1	1	1	1
Sampling Cabinet	1	1	1	1
Dosing Local Control Panel	1	1	0	0
Mixer	1	1	1	1
Mixer Control Panel	1	1	1	1
Transformer Rectifier	1	1	1	1
Acid Cleaning System	1	1	1	1
Water Quality Station	1	1	1	1
Pressure Reducing Valve	2	2	2	2
Cartridge Filter	3	3	3	3

Pressure Indicator	2	2	2	2
Air Flow Switch	1	1	1	1
Hydrogen Detector	2	1	1	1

3) Required trenching, backfill, asphalt patch paving, concrete coring, interconnecting piping and valves, and SCADA system integration, in accordance with applicable codes and standards.
4) Manufacturers' services for installation inspection, system start-up, and operator training
5) Electronic submittal of operation and maintenance manuals

Submersible Pump Replacements

Scope of work includes, both at Country Club and Tularcitos sites:

1) Disconnect wiring from (1) existing submersible pump at each site.
2) Provide crane lift safety plan and rigging for pump equipment. Owner must make arrangements to have building unoccupied during any lift.
3) As required, provide traffic control plan, which will require Owner's assistance in closing streets as needed for scope installation.
4) Install (1) 25HP, 1770 RPM, 94.5% efficiency vertical turbine pump at each site.
5) Wire and connect new pumps.
6) Install new sole plates.
7) Check valve rebuild and inspection.

Work by Owner

1) Provide all drawings and as-builts of site conditions available.
2) Feedback for Cybersecurity needs.
3) Needed IT support as required for integration.
4) Arrangements to have stations unoccupied during crane lifts for submersible pump replacements.
5) Provision of parking spaces for Contractor and Contractor's Subcontractors' employees' vehicles.
6) Provision of a clearly designated equipment and construction lay-down area for Contractor trailers and supplies required to perform the work.
7) Owner will facilitate any needed support for fuel tank monitoring equipment integration into the SCADA system. Because the fuel tank codes are complex, Contractor assumes the Owner use their fuel system expert to assist in any needed integration.
8) Any ongoing cellular connection costs or contracts.
9) Removal and/or remediation of Hazardous Substances and contaminated soil required anywhere on Owner's property, including, but not limited to, removal, disposal, and backfill with clean soil, not caused by Contractor or any of its agents or subcontractors, unless specified otherwise in this Scope of Work.
10) Disposition of Hazardous Substances Laws will be the responsibility of the Owner regardless of such Hazardous Substances' acceptability for disposal at local area disposal/recycle facilities.

Exclusions

- Overtime or weekend work.

- Removal/demolition and storage/disposal of existing structures and old equipment.
- Removal of unknown interior and underground structures or debris.
- Removal of hazardous or contaminated materials or equipment.
- Leak detection for equipment.
- Salt supply, including first fill.
- 40% Liquid Ammonium Sulfate supply, including first fill.
- Supply and feed of chemical during construction.
- Upgrades to electrical infrastructure if needed to supply new equipment.
- Any network upgrades to connect to City's internal network.
- Any changes to the fuel tank monitoring hardware other than pulling a set of contacts to the PLC to signal an alarm from the system.
- Painting of existing equipment or surfaces.
- Procurement of easements, zoning variances, and legal authorizations regarding planning and site use, if any, required for the Project.
- Installation of screening revisions, roof screens or additions, building enclosures, landscaping, visual, acoustic, or any other mitigation.
- Production of an environmental impact report or acquisition of any environmental permits, other than those specifically identified in this Scope of Work.
- Special inspections.
- Replacement of equipment not specifically listed here but required to meet updated codes.
- Ongoing SCADA software fees will be the responsibility of Owner.

Allowance

As mentioned above, per Owner's request, this ECM Scope of Work is preliminary and shall be finalized in close coordination with City staff, to determine the systems and strategies that will best suit the City in the long-term. Therefore, this contract includes a $1,800,000 (one million eight hundred thousand dollars) allowance to account for potential scope changes and additional scopes which are expected during final engineering, based on Owner's input. If Owner selected scope exceeds allowance amount available, a Change Order will be required. Depending on the additional scope identified, schedule adjustments may be required.

Additionally, Owner is interested in potentially adding their Pressure Reducing Valves (PRVs) to the SCADA and automation scope, which would require further investigation and engineering beyond the scope completed in Phase 1. The audits, engineering and investigations will be billed on a T&M basis against this allowance, and Owner-approved scopes will also be funded through this allowance.

ECM 4 – Facilities and Pumping Stations Lighting Upgrades

The table below lists the locations of the interior and exterior lighting retrofits. For detailed descriptions of each interior and exterior lighting retrofit, refer to Exhibit R.

Facilities and Pumping Stations Lighting Summary

Site	Location	Lighting Yes/ No
Facilities		
City Hall	455 East Calaveras Blvd., Milpitas, CA	Yes
Public Works Corp Yard and Vehicle Shop	1265 North Milpitas Blvd., Milpitas, CA	Yes

Police Department		
Community Center	457 East Calaveras Blvd., Milpitas, CA	Yes
Senior Center	40 North Milpitas Blvd., Milpitas, CA	Yes
Sports Center Complex	1325 East Calaveras Blvd., Milpitas, CA	Yes
Library Parking Garage	160 N Main St., Milpitas, CA	Yes
Fire Station #1 Main Fire Admin Fire Training Center	777 South Main St., Milpitas, CA	Yes
Fire Station #3	45 Midwick Drive, Milpitas, CA	Yes
Fire Station #4	775 Barber Lane, Milpitas, CA	Yes
Pumping Stations		
Jurgens Storm Pump Station	345 Jurgens Drive, Milpitas, CA	Yes
Spence Creek Storm Pump Station	11 Butler Street, Milpitas, CA	Yes
Penitencia Storm Pump Station	944 La Honda Drive, Milpitas, CA	Yes
Milpitas Materials Storm Pump Station	1125 N. Milpitas Blvd, Milpitas, CA	Yes
Abbott Storm Pump Station	1225 N. Abbott, Milpitas, CA	Yes
California Circle Storm Pump Station	1735 California Circle, Milpitas, CA	Yes
Berryessa Storm Pump Station	731 Folsom Circle, Milpitas, CA	Yes
Murphy Ranch Storm Pump Station	801 Murphy Ranch Road, Milpitas, CA	Yes
Bellew Storm Pump Station	481 Murphy Ranch Road, Milpitas, CA	Yes
Oak Creek Storm Pump Station	1521 McCarthy Blvd, Milpitas, CA	Yes
PD Sump Storm Pump Station	1275 N. Milpitas Blvd, Milpitas, CA	Yes
Wrigley Ford Storm Pump Station	75 Marylinn Drive, Milpitas, CA	Yes
Manor Storm Pump Station	349 Marylinn Drive, Milpitas, CA	Yes
McCarthy Storm Pump Station	1001 N. McCarthy Blvd, Milpitas, CA	Yes
Main Sewer Pump Station	1425 N. McCarthy Blvd, Milpitas, CA	Yes
Venus Way Sewer Pump Station	1085 Venus Way, Milpitas, CA	Yes
Gibraltar Turnout (2 adjacent) + G Reservoir	641 Gibraltar Court, Milpitas, CA	Yes
Ayer Reservoirs	1429 E. Calaveras Blvd, Milpitas, CA	Yes
Tularcitos Pump Station	1200 Tularcitos Drive, Milpitas, CA	Yes
Country Club Station	1437 Country Club Drive, Milpitas, CA	Yes
Minnis Tank	Launch Site Road, Milpitas, CA	Yes
Pinewood Well	227 Lonetree Court, Milpitas, CA	Yes
Sunnyhills Turnout	405 Washington Dr, Milpitas, CA	No
Calaveras Turnout	584 E. Calaveras Dr, Milpitas, CA	No
Main Street Turnout	534 Hammond Way, Milpitas, CA	No

Inclusions:

Provide and install new lighting fixtures or retrofit kits as identified in Exhibit R.

1. Interior retrofit includes:
    a. **High Efficiency Linear Light Emitting Diode (LED) Upgrades:** Where indicated, replace T5, T8 and T12 lamps and ballasts with new LED lamps and drivers, new troffer kits or new LED fixtures per Exhibit R.
    b. **High Efficiency Compact Light Emitting Diode (LED) Upgrades:** Where indicated, replace compact fluorescent, incandescent, halogen and high intensity

discharge lamps with new compact LED lamps and recessed down-light kits per Exhibit R.

c. **Emergency Ballasts:** Where indicated, replace existing 157 (one hundred and fifty-seven) emergency ballasts with LED emergency drivers per Exhibit R.
d. **Lighting Controls:** Provide, install, and commission lighting controls per Exhibit R.

2) Exterior retrofit includes:
   a. **LED Lighting for Exterior Applications:** Where indicated, replace high pressure sodium, metal halide, compact fluorescent, incandescent or halogen fixtures with new LED fixtures as set forth in Exhibit R.
   b. **Exterior Lighting Controls:** Provide and install motion sensors, photocells and bi-level (step-dim) control per Exhibit R.

Exclusions:

- Assumes standard 120-277V for all fixtures.
- Replacement of existing LED fixtures, occupancy or dimming sensors, unless specifically included in Exhibit R.
- The scope of work assumes that there are no broken lenses or ceiling tiles. No provisions have been made for replacing any existing lenses or ceiling tiles.
- All lenses will be cleaned of dust and other particles, but no staining or deeper soiling will be removed.
- Any replacement for any seismic supports for new fixtures.
- Repair or replacement of any existing fixtures including tombstones or fixture lens frames.
- Any troubleshooting, repair or upgrade to emergency lighting or egress systems unless specified.
- Replacement or repair of ceiling tiles, ceiling track system, or other ceiling surfaces expect where damage was directly caused by Contractor.
- All existing wiring is assumed to meet local and state building codes, repairing existing wiring including grounding is excluded.
- The scope of work assumes proper power is present for all fixtures. No provisions have been made for power upgrades or repairs, simply a one-for-one fixture or lamp/driver replacement.
- The scope of work assumes that existing poles are structurally sound, that no internal wiring or fuse issues are present, that any pole arms are in working condition, and that adequate power is provided to all fixtures. No allowances have been made to bring existing poles, pole arms, wiring or fuses to proper working condition.
- Hazardous Substances testing or abatement are excluded. The lighting upgrades are not expected to disturb existing ceiling and wall surfaces.
- Emergency drivers beyond as identified above.
- Any patching or painting.
- Any existing or new water leaks for sub-surface or well type fixtures are excluded from the scope of work and are the Owner's responsibility, including any leaks that may be caused during the retrofit process.

ECM 5 – Parks Lighting Upgrades

The table below lists the locations of the interior and exterior lighting retrofits. For detailed descriptions of each interior and exterior lighting retrofit, refer to Exhibit S.

Parks Lighting Summary

Site	Location	Lighting Yes/ No
Augustine Memorial Park	Cortex and Coelho off Escuela, Milpitas, CA	Yes
Ben Rogers Park	Grand Teton at Sequoia, Milpitas, CA	Yes
Calle Oriente Mini-Park	Calle Oriente off North Park Victoria, Milpitas, CA	Yes
Cardoza Park	Kennedy Drive at North Park Victoria, Milpitas, CA	Yes
Cerano Park	SanDisk and Murphy Ranch, Milpitas, CA	Yes
Creighton Park	Olympic west of South park Victoria, Milpitas, CA	No
Dixon Landing Park	Dixon Landing and Milmont, Milpitas, CA	Yes
Foothill Park	Roswell Drive at Roswell Court, Milpitas, CA	Yes
Gill Memorial Park	Paseo Refugio and Santa Rita, Milpitas, CA	Yes
Hall Memorial Park	LaHonda and Coyote, Milpitas, CA	Yes
Hidden Lake Park	N. Milpitas Blvd between Escuela Pkwy and Jacklin Rd, Milpitas, CA	Yes
Higuera Adobe Park	Wessex off N Park Victoria, Milpitas, CA	Yes
Hillcrest Park	Fieldcrest off Crescent, Milpitas, CA	Yes
Murphy Park	Yellowstone east of S. Park Victoria, Milpitas, CA	Yes
Pinewood Park	Lonetree and Starlite Drive, Milpitas, CA	Yes
Sandalwood Park	Escuela Pkwy and Russell, Milpitas, CA	Yes
Selwyn Park	Selwyn Drive off Dempsey Rd, Milpitas, CA	Yes
Sinnott Park	Clear Lake and Tahoe, Milpitas, CA	Yes
Starlite Park	Rudyard and Abbott Ave., Milpitas, CA	Yes
Strickroth Park	Martil and Gemma off east Tramway, Milpitas, CA	Yes
Jones Memorial Park	Jacklin at Hillview, Milpitas, CA	Yes
Robert E. Browne Park	Yellowstone east of S. Park Victoria, Milpitas, CA	Yes
Dog Park at Ed Levin	3100 Calaveras Rd, Milpitas, CA	No
Pecot Park	Dixon Landing, west of Conway, Milpitas, CA	No
Parc Metro East Park	Parc Metro, Curtis, east of main St, Milpitas, CA	Yes
Parc Metro Central Park	Parc Metro, Curtis, east of main St, Milpitas, CA	Yes
Parc Metro West Park	Parc Metro, Curtis, east of main St, Milpitas, CA	Yes
Alviso Adobe	Calaveras, east of Piedmont, Milpitas, CA	Yes
Tom Evatt Park	Abel St and Machado St, Milpitas, CA	Yes
Hetch Hetchy Linear Park	Hetch Hetchy Trail, Milpitas, CA	Yes
John McDermott Park	Alvarez Court, off Abel St, Milpitas, CA	Yes
O'Toole Elms Park	Abel St, north of Curtis St, Milpitas, CA	Yes
Calaveras Ridge Park	Calaveras Ridge Drive, Milpitas, CA	No
Bob McGuire Park	Garden St, between S. Milpitas Blvd and Piper Drive, Milpitas, CA	No
Augustus Rathbone Park	Expedition Lane and Jubilee Drive, Milpitas, CA	No
McCandless Park	1700 block McCandless Drive, Milpitas, CA	No

Inclusions:

Provide and install new lighting fixtures or retrofit kits as identified in Exhibit S.

2. Interior retrofit includes:
    c. **High Efficiency Linear Light Emitting Diode (LED) Upgrades:** Where indicated, replace T5, T8 and T12 lamps and ballasts with new LED lamps and drivers, new troffer kits or new LED fixtures per Exhibit S.
    d. **High Efficiency Compact Light Emitting Diode (LED) Upgrades:** Where indicated, replace compact fluorescent, incandescent, halogen and high intensity

discharge lamps with new compact LED lamps and recessed down-light kits per Exhibit S.

e. **Emergency Ballasts:** Where indicated, replace existing 1 (one) emergency ballast with an LED emergency driver per Exhibit S.
f. **Lighting Controls:** Provide, install, and commission lighting controls per Exhibit S.

3) Exterior retrofit includes:
   a. **LED Lighting for Exterior Applications:** Where indicated, replace high pressure sodium, metal halide, compact fluorescent, incandescent or halogen fixtures with new LED fixtures as set forth in Exhibit S.
   b. **Exterior Lighting Controls:** Provide and install motion sensors, photocells and bi-level (step-dim) control per Exhibit S.

Exclusions:

- Assumes standard 120-277V for all fixtures.
- Replacement of existing LED fixtures, occupancy or dimming sensors, unless specifically included in Exhibit S.
- The scope of work assumes that there are no broken lenses or ceiling tiles. No provisions have been made for replacing any existing lenses or ceiling tiles.
- All lenses will be cleaned of dust and other particles, but no staining or deeper soiling will be removed.
- Any replacement for any seismic supports for new fixtures.
- Repair or replacement of any existing fixtures including tombstones or fixture lens frames.
- Any troubleshooting, repair or upgrade to emergency lighting or egress systems unless specified.
- Replacement or repair of ceiling tiles, ceiling track system, or other ceiling surfaces expect where damage was directly caused by Contractor.
- All existing wiring is assumed to meet local and state building codes, repairing existing wiring including grounding is excluded.
- The scope of work assumes proper power is present for all fixtures. No provisions have been made for power upgrades or repairs, simply a one-for-one fixture or lamp/driver replacement.
- The scope of work assumes that existing poles are structurally sound, that no internal wiring or fuse issues are present, that any pole arms are in working condition, and that adequate power is provided to all fixtures. No allowances have been made to bring existing poles, pole arms, wiring or fuses to proper working condition.
- Hazardous Substances testing or abatement are excluded. The lighting upgrades are not expected to disturb existing ceiling and wall surfaces.
- Emergency drivers beyond as identified above.
- Any patching or painting.
- Any existing or new water leaks for sub-surface or well type fixtures are excluded from the scope of work and are the Owner's responsibility, including any leaks that may be caused during the retrofit process.

ECM 6 – Streetlighting Upgrades

Scope of work includes:

I. Install retrofit lighting fixtures:

- Replace existing high-pressure sodium (HPS), low pressure sodium, mercury vapor, induction, incandescent, and metal halide (MH) lamps with LED lamp technology as set forth in the table below.

Streetlight Type	Fixture Quantity	Control Quantity
Cobra Head Replacement Subtotal	1,443	1,443
Cobra Head Replacement, 40W	*76*	*76*
Cobra Head Replacement, 60W	*219*	*219*
Cobra Head Replacement, 80W	*202*	*202*
Cobra Head Replacement, 100W	*740*	*740*
Cobra Head Replacement, 125W	*166*	*166*
Cobra Head Replacement, 150W	*40*	*40*
Antique/ Decorative Replacement Kits, 45W	257	257
Installation of LED Fixtures Provided by Owner, Labor Only	485	485
Existing LED Streetlights	0	2,268
Total	**2,185**	**4,453**

- Provide wattage labels for new fixtures as required by PG&E.
- Provide traffic control plan, which will require Owner's assistance in closing streets as needed for scope installation.

II. Install and commission streetlighting controls:

- As shown in the table above, install and commission Philips CityTouch or equivalent cellular controls on all 4,453 new and existing streetlights, including photocells, by plugging connector nodes into NEMA sockets on top of fixtures. Controls shall connect to a web-based platform which will show any real-time outages.
- Provide traffic control plan, which will require Owner's assistance in closing streets as needed for scope installation.

III. Update the City of Milpitas PG&E records and overall streetlighting inventory:

- Track and log all streetlight retrofits and update latest excel sheet provided by PG&E, making sure it is current at the end of the project.

Exclusions:

- Assumes standard 120-277V for all fixtures.
- No encroachment permits are included.
- No photometrics or illumination studies are included.
- No bird spikes are included.
- No pole badge number replacements are included.
- Any lenses will be cleaned of dust and other particles, but no staining or deeper soiling will be removed.
- Any replacement for any seismic supports for new fixtures.
- Repair or replacement of any existing fixtures including tombstones or fixture lens frames.
- Any troubleshooting, repair or upgrade to emergency lighting or egress systems unless specified.
- All existing wiring is assumed to meet local and state building codes, repairing existing wiring including grounding is excluded.

- The scope of work assumes that existing poles are structurally sound, that no internal wiring or fuse issues are present, that any pole arms are in working condition, and that adequate power is provided to all fixtures. No allowances have been made to bring existing poles, pole arms, wiring or fuses to proper working condition.
- Any vegetation management required to access streetlights is excluded from Scope of Work and shall be responsibility of Owner.
- Scope of Work assumes all poles are accessible with a standard bucket truck, no additional provisions included.
- Replacement fixtures do not include any protective shields for locations requiring partial blockage of light to prevent stray light into unwanted areas. If individual streetlights are identified that require a protective shield, Contractor can provide and install protective shields for $115.00 each.
- Antique/Decorative Replacement Kits assume existing fixtures are in proper working condition. If existing fixture is not working, or are otherwise not suitable to be retrofitted, a replacement fixture will be provided at an additional cost.
- Existing cobra head streetlights are assumed to all have NEMA 3, 5 or 7 pin receptacles. Fixtures without NEMA sockets will either be excluded from the City Touch System or will require a new fixture at an additional cost.
- Ongoing annual fees for the streetlighting controls will be the responsibility of Owner.

ECM 7 – Sports Lighting Upgrades

Contractor shall be responsible for providing all design documents, materials and labor, on-site supervision, project management, tools, equipment, and obtaining permits required to complete the scope described below:

a. Design services, including City of Milpitas submittal.

b. Removal and installation of fixtures and poles as described in the table below:

Location	Remove	Install
Cardoza Park/ Milpitas Sports Complex Baseball Field (with Soccer Overlay)	60 fixtures (7 existing poles to remain in place)	8 TLC-BT-575 34 TLC-LED-1500 4 pathway fixtures
Cardoza Park/ Milpitas Sports Complex Softball Field	29 fixtures (6) 40’ poles	8 TLC-BT-575 6 TLC-LED-1200 18 TLC-LED-1500 3 pathway fixtures (4) 60’ poles (2) 70’ poles
Hall Memorial Soccer Field	16 fixtures (8) 40’ poles	24 TLC-LED-1500 4 bleacher/pathway fixtures (4) 80’ poles

c. Existing poles to remain are assumed to be in good condition.

d. Installation of Musco’s Control Link system at all three locations. Start up and commission the Control Link system to connect with the Musco network. This system includes remote on and off control as well as performance monitoring with 24/7 customer support.

e. Programming and tuning new lighting system.

The Owner will need to provide down time for the pole cell equipment as required by OSHA standards during the installation.

Exclusions:

- Assumes standard 480V, 3 phase system for all fixtures.
- Overtime or weekend work.
- Temporary power and lighting.
- Surveying, staking and utility locating.
- Removal and/or replacement of concrete and asphalt.
- Cost for Owner's agent inspections.
- Structural upgrades to existing poles not being replaced.
- Any replacement for any seismic supports for new fixtures.
- Any troubleshooting, repair or upgrade to emergency lighting or egress systems unless specified.
- All existing wiring is assumed to meet local and state building codes, repairing existing wiring including grounding is excluded.
- The scope of work assumes that existing poles are structurally sound, that no internal wiring or fuse issues are present, that any pole arms are in working condition, and that adequate power is provided to all fixtures. No allowances have been made to bring existing poles, pole arms, wiring or fuses to proper working condition.
- Any required ADA upgrades.
- Hazardous material surveys, testing, and remediation.
- Full or Comprehensive EIR (Report), environmental surveys, studies (including traffic impact, bio-impact, and remediation). If any are necessary, time and cost adjustment will be required.
- Any changes to the primary electrical service to the fields.
- Any corrections to existing power issues, including but not limited to any shorted wires, defective breakers/grounding, etc. The Owner alone is responsible for fixing any existing power-related issues discovered, as well as any issues with existing equipment not replaced by this Scope of Work.
- New perimeter fencing.
- Landscaping, including irrigation or drainage. Retrofitting sports lighting can at times require heavy equipment on fields. Contractor will work diligently to minimize damage as much as possible, coordinating with Owner to turn off field sprinklers prior to installation to reduce the risk of damage to the fields, but minor damage to grass and fields may still occur – including tire or track damage to grass while moving equipment, or minor depressions in field where equipment is used.
- Any changes to the existing public announcement system.
- Egress lighting for power outages.

<u>Deliverables:</u>

1. Photometric layouts.
2. As-builts.
3. Owner's manuals and maintenance guides.
4. Provide one manufacturer led web-based training to demonstrate the functionality of the Control Link System to City of Milpitas staff.

ECM 8 – Solar Generating Facilities

The table below lists the locations for the solar photovoltaic (PV) installations and the structure types:

Site	Type	Minimum Ground Clearance Height
Community Center	Canopy	13’6”
Senior Center	Canopy and Roof Mount	13’6”

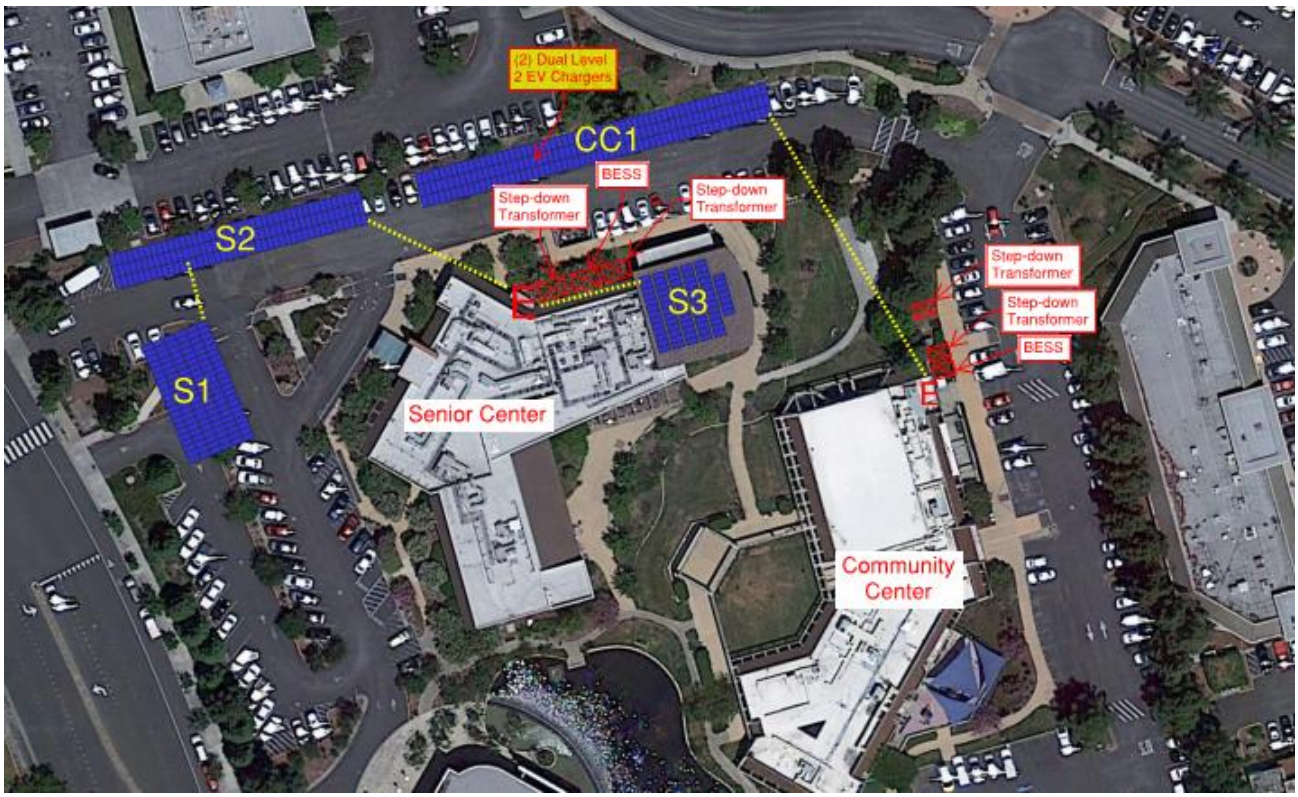
Scope of work will include:

1. Prepare and submit design drawings to the City of Milpitas for approval. This includes evaluation of the existing roof structure for structural capacity.
2. Provide geotechnical evaluations necessary for design requirements.
3. Provide utility interconnection drawings and application management services.
4. Provide and coordinate installation of the NGOM and NEM metering.
5. Procure materials and equipment necessary for construction.
6. Provide project management and construction management necessary for a full and complete installation.
7. Provide labor, supervision, and coordination with the Owner for the installation of photovoltaic modules and supporting structures, electrical distribution and control systems.
8. Provide and install PV modules and necessary mounting hardware for each system.
9. Provide and install inverters and necessary electrical equipment and conduits to connect to the electrical switchgear or meter. Electrical shutdowns are anticipated at each site. Time of shutdown will be coordinated with Owner and Utility and may include weekends.
10. Provide and install solar canopy structures. The canopy structure design will include a canopy structure that has a 7 degree tilt and is 13’6” feet clear of grade level on the low side and a pier depth of eight feet deep and assumes no de-watering, benching, shoring, or casing. Canopies will be provided with decorative fascia and decorative radiused HSS tube steel gussets, both painted to match canopy steel.
11. Provide and install roof mounted system. Provide and install necessary commodity roofing products to flask racking standoffs and solar related penetrations to maintain waterproof integrity of the existing structure. Owner to provide contact information for roofer/roof warranty holder so Contractor can coordinate to ensure work maintains roof warranty.
12. DC wiring and AC wiring within the solar canopies and roof mount structure shall be copper wire. Aluminum wire shall be used from each system’s AC combiner to the main point of connection at the site’s electrical switchgear.
13. Provide and install a step-down transformer at each site, with new equipment pads. Step-down transformers shall be enclosed in 6’ tall chain link fence.
14. Provide and install fourteen (14) new LED lighting fixtures (RAB PRT42N or equivalent) for canopies (one for each 27’ bay).
15. Provide as-built drawings and Operations & Maintenance manuals in electronic format upon project completion.
16. Provide tree removal, as required. 29 trees are expected to be removed, and any tree removed shall be replanted on site at a 2:1 ratio. Trees identified for removal are shown on the Tree Removal Layout below. Location of on-site replanting will be coordinated with Owner.
17. Provide lighting fixture, pole, and bollard removal, as required.
18. Provide miscellaneous backfill and restoration of landscaping in areas of work.

19. Start-up, test, and commission the systems in accordance with design plan and applicable industry standards.
20. Secure the Project Location and provide traffic redirection during rigging operations, and during the move-in and move-out of large equipment. Owner will assist with the foregoing site logistics by coordinating access and scheduling with Contractor.

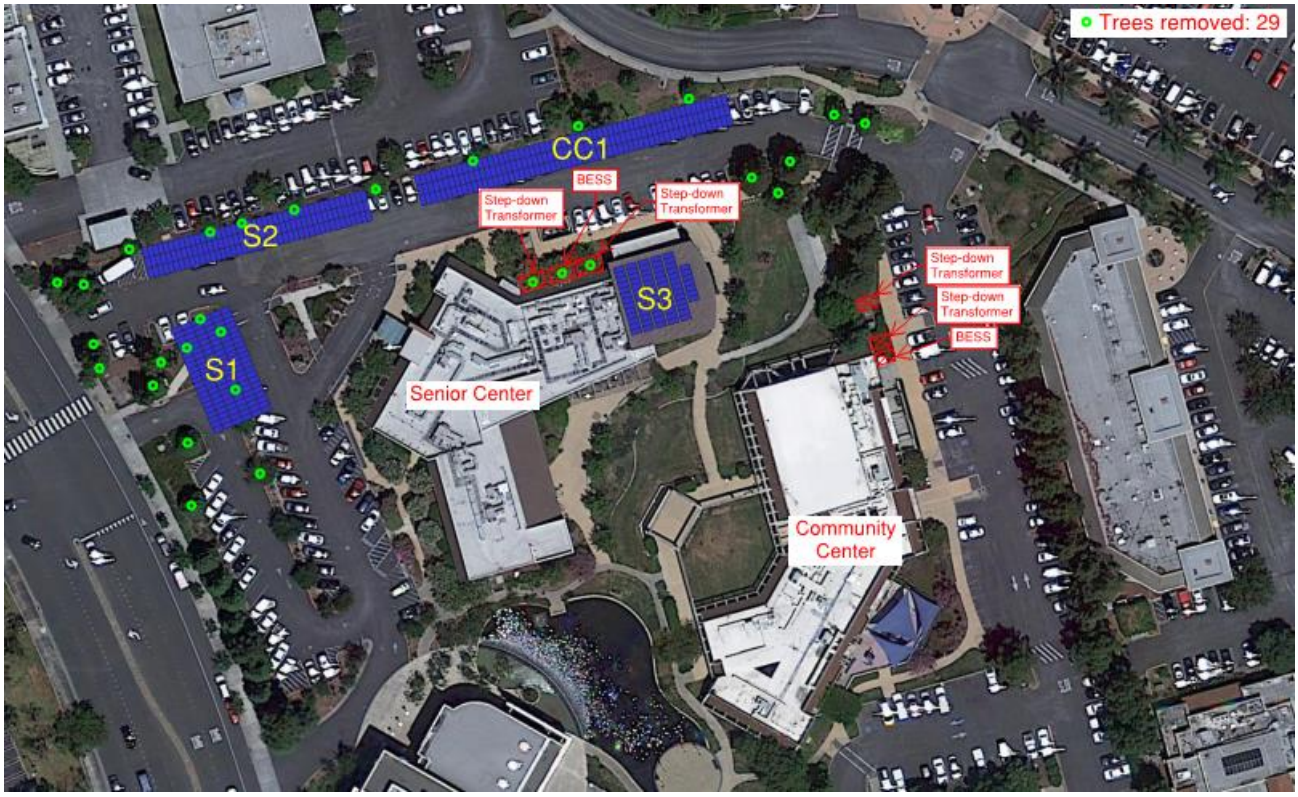
Preliminary Photovoltaic Layout

The following is a schematic engineering layout. The schematic engineering layout and the electrical routing proposed are subject to change due to field conditions and upon completion of final engineering.



Preliminary Tree Removal Layout

The following is a preliminary tree removal layout. It is subject to change due to field conditions and upon completion of final engineering.



Assumptions, Exceptions, Exclusions:

1. Scope of Work assumes that existing Senior Center roof structure can take on the added structural load of the PV system without requiring upgrades or repairs of any kind.
2. Cost for ADA accessibility upgrades to existing buildings or parking lots for path of travel, if required, are not included and will be calculated based upon final design.
3. Fencing slats are not included.
4. Remediation and/or removal of hazardous materials, hazardous wastes, or spoils are not included.
4. Access to areas of construction will be blocked to public during construction for safety.

ECM 9 – Resiliency Microgrids

Design, provide and install islanding microgrid at the Milpitas Senior Center and the Milpitas Community Center (roughly where shown in the Preliminary Photovoltaic Layout above).

Scope of Work at each site includes:

- Prepare and submit design drawings (to be included in solar PV design set) to City of Milpitas for approval
- Provide and install (1) Schneider Electric 125kW, approximately two-hour (or equivalent) Battery Energy Storage System (BESS) with new equipment pad.
- Provide and install (1) 100 kW natural gas reciprocating internal combustion engine (generator) with new equipment pad, to be connected to each site's existing utility natural gas supply. No onsite fuel storage is provided.
- Provide and install (1) 1600A energy control center (1200A at Community Center) to consolidate BESS and natural gas generator.

- Replace main utility breaker with an automated, remotely controllable breaker with a synch check relay.
- Automated microgrid controls (with optional manual override) to integrate the solar systems described in ECM 8 with the BESS, generator and switchgear modifications to enable the system to island facilities from the grid so they remain operational in case of a planned or unplanned power outage. In general, goal is to primarily supply energy for each site's operation from the solar and battery systems, with the reciprocating engines complementing those as necessary.
- System installation includes detailed engineering, drawings, AHJ permitting as required, procurement services, installation, interconnection to the utility, system start-up and commissioning services.

Exclusions and clarifications:

- Microgrid controls and functionality can be accessed both on site (through local HMI on control center), as well as remotely through cloud-based platform.
- Microgrid is not designed to provide uninterrupted power supply in case of grid failure. The sites will experience a few seconds' delay between the system detecting a utility outage and powering back facility as the microgrid isolates itself from the grid and reconfigures assets to safely island the facility.
- Design assumes that facilities' load profile during an outage will be similar and within the parameters experienced in historical usage and baselines. If increased loads occur, Contractor cannot guarantee that microgrid will be able to power and sustain facility loads without Owner load curtailment.
- This ECM is subject to availability and lead time of BESS systems at the time of equipment ordering.
- Power shutdowns to the sites will be required to perform microgrid interconnection, initial commissioning and testing, as well as ongoing maintenance islanding tests as needed.
- Future availability of generators is subject to Bay Area Air Quality Management District and any other AHJ approvals as applicable.
- System design assumes existing electrical gear is adequately sized to support additional microgrid loads. No allowances other than those described above have been made for modifications to existing switchgear, Owner or utility electrical equipment.

ECM 10 – Electric Vehicle Charging Stations

Provide and install (2) bollard style Level 2 commercial dual-port electric vehicle (EV) charging stations to be located at the Senior Center parking lot as shown in the Preliminary Photovoltaic Layout above.

Scope of Work:

1. Prepare and submit design drawings (to be included in solar PV design set) to City of Milpitas for approval.
2. Procure materials (SemaConnect S6 or equivalent) and equipment necessary for construction.
    a. Manufacturer's 5-year material and workmanship warranty included
    b. Manufacturer's first 5 years of network service fees included
3. Provide project management and construction management necessary for a full and complete installation.
4. Wiring between charging stations shall be with copper wire. Aluminum wire will be used from AC combiner to the main point of connection at the site's electrical switchgear.
5. Provide as-built drawings and Operations & Maintenance manuals upon project completion.
6. Start-up, test, and commission the systems in accordance with design plan and applicable industry standards.
7. Coordinate billing parameters and website setup between vendor and Owner.

Exclusions:

1. Ongoing annual fees for the EV charging stations beyond the first five years will be the responsibility of Owner.
2. Any ADA upgrades will be the responsibility of Owner.

General Project Exclusions and Clarifications Applicable to All Scopes:

- Owner will be responsible for obtaining and paying for inspections and any required Building, Mechanical, and Electrical Permits.
- City of Milpitas permitting fees are excluded.
- ADA, Fire Life Safety, and other work required as a result of AHJ submission is excluded, except as noted above.
- Contractor has assumed Construction will be allowed to proceed smoothly and in a continuous flow. No allowance has been made to demobilize and remobilize resources due to schedule interruptions.
- Temporary utilities are to be provided by Owner at no cost to Contractor (including, without limitation, trailer power, phone lines, and construction power).
- Remediation and/or removal and disposal of Hazardous Substances, including asbestos containing materials, to be by Owner (except as noted above). If Contractor encounters material suspected to be hazardous, Contractor will notify Owner representative and stop further work in the area until the material is removed.
- CEQA or other environmental studies, if required, will be the responsibility of Owner.
- Public Hearings, if required, will be the responsibility of Owner.
- Contractor will require the assistance of Owner personnel to secure the Project Location and to provide traffic redirection during rigging operations, and during the move-in and move-out of large equipment.
- No allowance has been made for structural upgrades to existing structures, except as specifically set forth in this Scope of Work.
- No allowance has been made for screening of new or existing equipment, except as specifically set forth in this Scope of Work.
- Contractor standard construction means and methods will be used.

- Owner will provide access to the Facilities, laydown areas at the work sites, and a reasonable number of parking spaces for Contractor and Contractor's subcontractor vehicles in parking lots at the Facilities.
- Work will be performed during normal work hours; no overtime hours are included in the Contract Amount. The lighting and water fixture retrofit Work will be performed so as not to unreasonably interfere with the building schedule.
- The Scope of Work assumes that, unless specifically identified otherwise, all existing systems are functioning properly and are up to current codes. Contractor will not be responsible for repairs or upgrades to existing systems that are not functioning properly or compliant with current codes. No allowances have been made to bring existing systems up to code.
- No allowance has been made to repair or replace damaged or inoperable existing equipment that is not specifically being replaced under the Scope of Work. When such items are discovered, Owner will immediately notify Owner representative.
- No allowance has been made for underground obstructions or unsuitable soil conditions encountered during trenching or other excavation.
- The PV shade structure is not weather tight and will not provide shelter from rain.
- Installing water hose bibs for washing the panels are excluded.
- Parking lot repairs are excluded, except to the extent of damage caused by Contractor or its subcontractors.
- Repair or replacement of existing housekeeping pads, concrete pads, or base repair of existing walkway lighting are excluded, except as specifically set forth in this Scope of Work.
- Painting, unless specified, is excluded.
- With respect to lighting equipment maintenance and/or lamp and ballast retrofitting, Owner will properly ground lighting fixtures before Contractor commences Work in compliance with applicable codes.
- With respect to installation of new lighting fixture installations, prior to commencement of the lighting fixture installation, Owner will provide an existing or new grounding conductor or solidly grounded raceway with listed fittings at the lighting fixture junction box that is properly connected to the facility grounding electrode system in compliance with the latest NEC requirements adopted by the authority having jurisdiction. This Scope of Work includes, if applicable, properly terminating the lighting fixtures to the existing grounding conductor or to the existing solidly grounded raceway with listed fittings at the lighting fixture junction box.
- Where this Scope of Work includes pulling new wiring for lighting fixtures from an existing lighting panel, a grounding conductor must be included in the lighting circuits. Owner is responsible for providing an existing or new grounding conductor terminal bar at the lighting panel that is properly connected to the Facility grounding electrode system in compliance with the latest NEC adopted by the authority having jurisdiction.
- With respect to Projects with new equipment connecting to the Facility's existing electrical distribution system, Contractor will not be responsible for the electrical integrity of the existing electrical system, e.g., the condition and proper termination of current-carrying, grounded, and grounding conductors, bus taps, protective elements, the proper protection of existing wire through knockouts, or missing components. Owner is responsible for providing and maintaining the facility's electrical distribution system that meets the latest NEC and guidelines adopted by the authority having jurisdiction.

- Contractor will not be responsible for existing damaged pipes, valves, and related parts and components.
- Depth of piers for canopy and ground mount installations are assumed to be 8 ft. No allowances have been made should soils report indicate that depth of piers should be deeper due to soil quality and/or seismic concerns, or additional seismic concerns requires deeper footings.

Contractor Beneficial Use and Warranty criteria for specific pieces of equipment:

1. WATER METER RETROFITS – The Contractor Warranty commences immediately upon uninterrupted operation for a duration, as necessary, with a maximum of 2 weeks, to determine proper operation. Contractor will provide written notice to Owner of the date the Contractor Warranty commences.

2. PUMP - The Contractor Warranty commences immediately upon the occurrence of two weeks of uninterrupted supply of GPM flows within 10% of design values. "Uninterrupted operation" is defined as: no involuntary shutdowns due to mechanical difficulties. Flows will be established by a test and balance report created by Contractor. With respect to the Pump, Contractor will provide written notice to Owner of the date the Contractor Warranty commences.

3. LIGHTING RETROFITS – With respect to each site's Scope of Work, the Contractor Warranty commences immediately upon uninterrupted operation for a duration, as necessary, with a maximum of 2 weeks, to determine proper operation. Contractor will provide written notice to Owner of the date the Contractor Warranty commences.

4. STADIUM LIGHTING RETROFITS - The Contractor Warranty commences immediately upon uninterrupted operation for a duration, as necessary, with a maximum of 2 weeks, to determine proper operation. Contractor will provide written notice to Owner of the date the Contractor Warranty commences.
    a. Light Fixture and Controls Warranty – Musco light fixtures and controls will be provided with a minimum of 10-year material and 2-year labor warranty.

5. SOLAR GENERATING FACILITIES - The Contractor Warranty commences immediately when the Generating Facility is capable of generating expected energy and the Utility is ready to issue the permission-to-operate letter.
    a. Solar Module Warranty – solar modules will be provided with a 25-year manufacturer production warranty.
    b. Solar Inverter Warranty – inverters will be provided with a 10-year manufacturer parts and service warranty.

6. BATTERY ENERGY STORAGE SYSTEM – The Contractor Warranty commences immediately when the BESS is interconnected and operational, and the Utility is ready to issue the permission-to-operate letter.
    a. BESS – equipment will be provided with a 10-year manufacturer warranty.

7. EV CHARGING STATIONS – The Contractor Warranty commences immediately upon the occurrence of uninterrupted operation for a duration, as necessary, with a maximum of 2 weeks,

to determine proper operation.

a. EV CHARGING STATIONS – equipment will be provided with a 5-year manufacturer warranty.

Substantial & Final Completion Forms per Scope of Work:

The table below provides the number of substantial and final completion forms that will be used to document beneficial use and final completion of each scope of work.

ECM	Scope of Work	Location	Total Qnty of Substantial Completions	Total Qnty of Final Completions
1	Facilities Water Fixture Retrofits	Citywide	1, for entire ECM	1, for entire ECM
2	Water Meter Upgrades	Citywide	1, for entire ECM	1, for entire ECM
3	SCADA & Remote Communication, Pumping, and Automated Water Treatment	Citywide	1, for entire ECM	1, for entire ECM
4	Facilities and Pumping Stations Lighting Upgrades	31 sites	1, for entire ECM	1, for entire ECM
5	Parks Lighting Upgrades	29 sites	1, for entire ECM	1, for entire ECM
6	Streetlighting Upgrades	Citywide	1, for entire ECM	1, for entire ECM
7	Sports Lighting Upgrades	3 sites	3, one per site	1, for entire ECM
8	Solar Generating Facilities	2 sites	2, one per site	1, for entire ECM
9	Resiliency Microgrids	2 sites	2, one per site	1, for entire ECM
10	Electric Vehicle Charging Stations	1 site	1, for entire ECM	1, for entire ECM

EXHIBIT B

PROJECT SCHEDULE

Phase 2: A preliminary construction schedule is attached, assuming Notice to Proceed is granted on 10/30/2020. If delayed, durations shown shall be used from actual Notice to Proceed date to determine completion dates.

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	Title
_____	_____
Name	Name
_____	_____
Signature	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

¨ Individual
¨ Corporate Officer

_____
Title(s)

¨ Partner(s) ¨ Limited
¨ General

¨ Attorney-In-Fact
¨ Trustee(s)
¨ Guardian/Conservator
¨ Other:

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

_____
_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

EXHIBIT K

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

¨ Individual
¨ Corporate Officer

_____
Title(s)

¨ Partner(s) ¨ Limited
¨ General

¨ Attorney-In-Fact
¨ Trustee(s)
¨ Guardian/Conservator
¨ Other:

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

_____
_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

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COUNTY OF _____

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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

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¨ Individual
¨ Corporate Officer

_____
Title(s)

¨ Partner(s) ¨ Limited
¨ General

¨ Attorney-In-Fact
¨ Trustee(s)
¨ Guardian/Conservator
¨ Other:

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

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of Attorney to local representatives of the bonding company must also be attached.

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_____

Notary Acknowledgment

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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

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CAPACITY CLAIMED BY SIGNER

¨ Individual
¨ Corporate Officer

_____
Title(s)

¨ Partner(s) ¨ Limited
¨ General

¨ Attorney-In-Fact
¨ Trustee(s)
¨ Guardian/Conservator
¨ Other:

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

_____
_____

DESCRIPTION OF ATTACHED DOCUMENT

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Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

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STATE OF CALIFORNIA
COUNTY OF _____

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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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CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General

☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

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

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Number of Pages

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_____
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of-Attorney to local representatives of the bonding company must also be attached.

EXHIBIT L

STANDARDS OF OCCUPANCY AND CONTROL

The following standards are a guideline used to evaluate the energy conservation measures in this program. It is understood that existing and installed equipment may not allow for exact times and temperatures to be met, but Contractor will attempt to meet the below standards.

Facility	Occupancy/Operation Schedule	HVAC Schedule	Heating Temperature Setpoints	Cooling Temperature Setpoints
City of Milpitas Public Works, Police Department and Corp Yard	24/7 (Police Department) 8 AM – 5 PM (Monday-Friday, Public Works and Corp Yard)	6 AM – 5 PM (For specific units being replaced)	67°F – 68°F	70°F – 71°F
City of Milpitas Sports Center	6 AM – 9 PM (Monday-Thursday) 6 AM – 5 PM (Friday) 6 AM – 1 PM (Saturday)	6 AM – 9 PM (Monday-Friday) 6 AM – 1 PM (Saturday)	65°F – 76°F	67°F – 78°F
City of Milpitas City Hall	8 AM – 5 PM (Monday-Friday) 24/7 (IT & Elevator)	24/7 (IT & Elevator)	67°F	69°F
City of Milpitas Community Center	8 AM – 6 PM (Monday-Thursday) 8 AM – 5 PM (Friday)	8 AM – 6 PM (Monday-Thursday) 8 AM – 5 PM (Friday)	70°F – 71°F	70°F – 73°F
City of Milpitas Senior Center	8:30 AM – 4:30 PM (Monday-Friday)	8 AM – 6 PM (Monday-Thursday) 8 AM – 5 PM (Friday)	70°F – 71°F	70°F – 73°F
City of Milpitas Fire Station #1	24/7	Varies by occupancy	68°F – 70°F	70°F – 73°F
City of Milpitas Fire Station #3	8 AM – 5 PM (Monday-Friday) Varies, not always occupied	Varies by occupancy	69°F	73°F
City of Milpitas Fire Station #4	8 AM – 5 PM (Monday-Friday) Varies, not always occupied	Varies by occupancy	69°F	73°F
City of Milpitas Parks	6 AM – 10 PM Lights on from Dusk to 10 PM	Not Applicable		
City of Milpitas Pumping Stations	As needed, up to 24/7	Not Applicable		
City of Milpitas Streetlights	Dusk - Dawn	Not Applicable		

EXHIBIT M

SCOPE OF MONITORING INSTALLATION

Overview of DAS Network Installation and Equipment Requirements

Contractor will provide a revenue-grade billing, data acquisition system (DAS). This will provide readily available access to various internal and external information collected on the distributive generation (i.e., solar PV) plants.

Contractor DAS Monitoring Installation:

- Supply and install hardware specific to the DAS system.
- Supply and install, terminate, label, and test all Data Point of Connection (DPOC) communication cabling from each DAS node to the predetermined and respective DPOC(s); in accordance with [Customers] specifications.
- Test and verify generating system(s) network connectivity.
  a. TCP/IP internal addressing and verification
- Supply, install, and configure a Modbus based digital Net Energy Meter (NEM).
- Connect the data portion of digital NEM(s) to their respective DPOC(s).
- Supply, install, and configure a Modbus based digital Net Generation Output Meter (NGOM).
- Perform the physical installation, labeling, testing and certification testing of each data circuit from the digital NEM(s) to their respective DPOC(s).
- Provide basic system training to designated Owner/Facility maintenance staff.

EXHIBIT N

M&V SERVICES

EQUIPMENT AND FACILITIES COVERED

Contractor will perform measurement and verification services ("M&V Services") as set forth in this Exhibit N with respect to Owner's property at the following Project Locations:

Site	Location
Facilities	
City Hall	455 East Calaveras Blvd., Milpitas, CA
Public Works Corp Yard and Vehicle Shop Police Department	1265 North Milpitas Blvd., Milpitas, CA
Community Center	457 East Calaveras Blvd., Milpitas, CA
Senior Center	40 North Milpitas Blvd., Milpitas, CA
Sports Center Complex	1325 East Calaveras Blvd., Milpitas, CA
Library Parking Garage	160 N Main St., Milpitas, CA
Fire Station #1 Main Fire Admin Fire Training Center	777 South Main St., Milpitas, CA
Fire Station #3	45 Midwick Drive, Milpitas, CA
Fire Station #4	775 Barber Lane, Milpitas, CA
Pumping Stations	
Jurgens Storm Pump Station	345 Jurgens Drive, Milpitas, CA
Spence Creek Storm Pump Station	11 Butler Street, Milpitas, CA
Penitencia Storm Pump Station	944 La Honda Drive, Milpitas, CA
Milpitas Materials Storm Pump Station	1125 N. Milpitas Blvd, Milpitas, CA
Abbott Storm Pump Station	1225 N. Abbott, Milpitas, CA
California Circle Storm Pump Station	1735 California Circle, Milpitas, CA
Berryessa Storm Pump Station	731 Folsom Circle, Milpitas, CA
Murphy Ranch Storm Pump Station	801 Murphy Ranch Road, Milpitas, CA
Bellew Storm Pump Station	481 Murphy Ranch Road, Milpitas, CA
Oak Creek Storm Pump Station	1521 McCarthy Blvd, Milpitas, CA
PD Sump Storm Pump Station	1275 N. Milpitas Blvd, Milpitas, CA
Wrigley Ford Storm Pump Station	75 Marylinn Drive, Milpitas, CA
Manor Storm Pump Station	349 Marylinn Drive, Milpitas, CA
McCarthy Storm Pump Station	1001 N. McCarthy Blvd, Milpitas, CA
Main Sewer Pump Station	1425 N. McCarthy Blvd, Milpitas, CA
Venus Way Sewer Pump Station	1085 Venus Way, Milpitas, CA
Gibraltar Turnout (2 adjacent) + G Reservoir	641 Gibraltar Court, Milpitas, CA
Ayer Reservoirs	1429 E. Calaveras Blvd, Milpitas, CA
Tularcitos Pump Station	1200 Tularcitos Drive, Milpitas, CA
Country Club Station	1437 Country Club Drive, Milpitas, CA
Minnis Tank	Launch Site Road, Milpitas, CA
Pinewood Well	227 Lonetree Court, Milpitas, CA
Sunnyhills Turnout	405 Washington Dr, Milpitas, CA
Calaveras Turnout	584 E. Calaveras Dr, Milpitas, CA
Main Street Turnout	534 Hammond Way, Milpitas, CA
Parks	
Augustine Memorial Park	Cortex and Coelho off Escuela, Milpitas, CA
Ben Rogers Park	Grand Teton at Sequoia, Milpitas, CA
Calle Oriente Mini-Park	Calle Oriente off North Park Victoria, Milpitas, CA
Cardoza Park	Kennedy Drive at North Park Victoria, Milpitas, CA

Cerano Park	SanDisk and Murphy Ranch, Milpitas, CA
Creighton Park	Olympic west of South park Victoria, Milpitas, CA
Dixon Landing Park	Dixon Landing and Milmont, Milpitas, CA
Foothill Park	Roswell Drive at Roswell Court, Milpitas, CA
Gill Memorial Park	Paseo Refugio and Santa Rita, Milpitas, CA
Hall Memorial Park	LaHonda and Coyote, Milpitas, CA
Hidden Lake Park	N. Milpitas Blvd between Escuela Pkwy and Jacklin Rd, Milpitas, CA
Higuera Adobe Park	Wessex off N Park Victoria, Milpitas, CA
Hillcrest Park	Fieldcrest off Crescent, Milpitas, CA
Murphy Park	Yellowstone east of S. Park Victoria, Milpitas, CA
Pinewood Park	Lonetree and Starlite Drive, Milpitas, CA
Sandalwood Park	Escuela Pkwy and Russell, Milpitas, CA
Selwyn Park	Selwyn Drive off Dempsey Rd, Milpitas, CA
Sinnott Park	Clear Lake and Tahoe, Milpitas, CA
Starlite Park	Rudyard and Abbott Ave., Milpitas, CA
Strickroth Park	Martil and Gemma off east Tramway, Milpitas, CA
Jones Memorial Park	Jacklin at Hillview, Milpitas, CA
Robert E. Browne Park	Yellowstone east of S. Park Victoria, Milpitas, CA
Dog Park at Ed Levin	3100 Calaveras Rd, Milpitas, Milpitas, CA
Pecot Park	Dixon Landing, west of Conway, Milpitas, CA
Parc Metro East Park	Parc Metro, Curtis, east of main St, Milpitas, CA
Parc Metro Central Park	Parc Metro, Curtis, east of main St, Milpitas, CA
Parc Metro West Park	Parc Metro, Curtis, east of main St, Milpitas, CA
Alviso Adobe	Calaveras, east of Piedmont, Milpitas, CA
Tom Evatt Park	Abel St and Machado St, Milpitas, CA
Hetch Hetchy Linear Park	Hetch Hetchy Trail, Milpitas, CA
John McDermott Park	Alvarez Court, off Abel St, Milpitas, CA
O'Toole Elms Park	Abel St, north of Curtis St, Milpitas, CA
Calaveras Ridge Park	Calaveras Ridge Drive, Milpitas, CA
Bob McGuire Park	Garden St, between S. Milpitas Blvd and Piper Drive, Milpitas, CA
Augustus Rathbone Park	Expedition Lane and Jubilee Drive, Milpitas, CA
McCandless Park	1700 block McCandless Drive, Milpitas, CA

I. Definitions:

Capitalized terms used in this Exhibit N and not defined in the Contract, have the meanings set forth below:

"**Accumulated Savings**" means, as of any date of determination, the cumulative total of Excess Savings.

"**Actual Energy Rate**" means, for any Measurement Period, utility rates calculated by Contractor using actual utility billing information supplied by Owner for that Measurement Period.

"**Assessment Work**" means work required to assess the effect on EC Savings for any significant changes to the Facilities (including, but not limited to, building additions, new buildings, and new or changed HVAC equipment).

"**Base Energy Rate**" means the dollars per energy unit for each building and/or each ECM, set forth in this Exhibit N, Section (III), and used by Contractor to calculate the EC Savings.

"**Baseline**" means the energy use established by Contractor from time to time for each building in the Facilities, taking into consideration Energy Use Factors for such buildings.

"**EC Savings**" means the savings in units of dollars ($) calculated by Contractor in the manner set forth in this Exhibit N, Section (III), achieved through the reduction in consumption or demand through implementation of the Work.

"**Energy Rate Factors**" means factors identified by Contractor which may affect utility rates from the local utility companies.

"**Energy Savings Report**" is defined in this Exhibit N, Section (II)(D).

"**Energy Savings Term**" means the period beginning on the first day of the Construction Period and ending on the earlier of: (i) the day immediately preceding the fifth (5th) anniversary of the M&V Commencement Date; (ii) the termination of the Contract; or (iii) the termination by Owner of the M&V Services in accordance with this Exhibit N, Section (II)(G).

"**Energy Unit Savings**" means the savings in units of energy, power, water, etc., calculated by Contractor in the manner set forth in this Exhibit N, Section (III), achieved through the reduction in consumption or demand through implementation of the Work.

"**Energy Use Factors**" means factors identified by Contractor which may affect the Baselines or energy use for the Facilities, including but not limited to: hours and levels of occupancy; adjustments in labor force; building use and operational procedures; temperature, humidification, and ventilation levels; installed lighting and scheduled use; building construction and size; general level of repair and efficiency of heating and air conditioning equipment and other energy-using equipment; and amount of heating and air conditioning and other energy-using equipment.

"**Energy Use Savings**" means, for any Measurement Period, those savings, having units of dollars ($), achieved for such Measurement Period through reductions in energy use, energy demand, water use, and the use of other commodities.

"**Excess Savings**" means the excess of EC Savings over Guaranteed Savings, calculated in the manner set forth in this Exhibit N, Section (II)(I)(iv).

"**Guarantee Payment**" means, for any Measurement Period, either: (i) a cash payment by Contractor to Owner in an amount equal to the Guarantee Shortfall for that Measurement Period pursuant to this Exhibit N, Section (II)(A)(ii); or (ii) additional energy services or energy saving retrofits requested by Owner with an agreed value equal to the Guarantee Shortfall for that Measurement Period pursuant to this Exhibit N, Section (II)(A)(iii).

"**Guarantee Shortfall**" means an amount calculated in accordance with this Exhibit N, Section (II)(I)(v).

"**Guaranteed Savings**" means, for any Measurement Period, the dollar amount set forth below for such Measurement Period, as the same may be adjusted from time to time by Contractor for changes in Energy Rate Factors, Energy Use Factors and consequential revisions to the relevant Baseline:

Measurement Period	Guaranteed Savings
1	$1,508,673
2	$1,576,170
3	$1,646,688
4	$1,720,365

5	$1,797,340

"**IPMVP**" means the International Performance Measurement and Verification Protocol prepared by Efficiency Valuation Organization.

"**Projected Energy Savings**" means those Energy Unit Savings, which Contractor anticipates will be realized from the installation and continued operation of the Work, as set forth in this Exhibit N, Section (III).

"**Savings Guarantee**" is defined in this Exhibit N, Section (II)(A)(i).

II. Terms and Conditions

A. Guaranteed Savings.

i. Savings Guarantee. Upon the terms and subject to the conditions set forth herein, Contractor warrants that Owner will realize total EC Savings during the Energy Savings Term of not less than the total Guaranteed Savings (the "Savings Guarantee"), as the same may be adjusted from time to time for changes in Energy Rate Factors, Energy Use Factors and consequential revisions to the relevant Baseline.

ii. Guarantee Payment. For any Measurement Period in which there is a Guarantee Shortfall, Contractor will pay to Owner, within thirty (30) calendar days after the acceptance by Owner of the Energy Savings Report for such Measurement Period, the Guarantee Payment for that Measurement Period.

iii. Services or Retrofits in Lieu of Guarantee Payment. If in the judgment of Owner, Owner would benefit from additional energy services or energy saving retrofits, Owner and Contractor may mutually agree that Contractor will provide such services or retrofits in lieu of the Guarantee Payment for such Measurement Period. For the purposes of this Contract, such services or retrofits will have a deemed value equal to the Guarantee Shortfall for that Measurement Period.

iv. Excess Savings. For any Measurement Period in which there are Excess Savings, Owner will repay to Contractor, to the extent of such Excess Savings, any Guarantee Payments previously paid by Contractor to Owner and not previously repaid to Contractor by Owner, and the Excess Savings for such Measurement Period will be reduced by the amount of such repayment. If Contractor has provided services or retrofits in lieu of the Guarantee Payment for a prior Measurement Period, such that the Guarantee Payment for such Measurement Period cannot be repaid by Owner, then in lieu of such repayment Excess Savings will be increased by the deemed value of such services or retrofits.

v. Excusable Events. If Contractor is delayed in, or prevented from, accurately calculating the actual EC Savings for any day of any Measurement Period by reason of any Excusable Event, such circumstance will not constitute a default, and Contractor will be excused from performing the M&V Services while such event is continuing. During such event, Projected Energy Savings for the month(s) in which such event is continuing will be used in lieu of actual data; *provided* that if three (3) or more years of post M&V Commencement Date data are available for such month(s), the historical average of such data for such month(s) will be used in lieu of Projected Energy Savings.

vi. *Not Used.*

B. Changes in Energy Use Factors.

i. Adjustments to Baselines. Owner will notify Contractor in writing within ten (10) Business Days of any change in any Energy Use Factor. In addition, data collected by Contractor during or before the Energy Savings Term may indicate a change in the energy use pattern at the Facilities or any portion thereof and require a change to one or more Baselines. Contractor will determine the effect that any such change will have on EC Savings and present to Owner a written analysis of the effects of such changes. Contractor will also make corresponding revisions to the Baselines and/or EC Savings that it deems appropriate in its reasonable discretion.

ii. Adjustments to Guaranteed Savings. If a change in any Energy Rate Factor or Energy Use Factor results in a reduction of EC Savings, then the Guaranteed Savings for the corresponding Measurement Period(s) will be decreased by the same amount. Contractor will notify Owner, in writing, of all such changes.

iii. Changes to Facilities. Owner or Contractor may from time to time propose to make changes to the Facilities for the express purpose of increasing EC Savings or addressing events beyond its control. It is agreed that these changes will only be made with the written consent of both Parties, which will not be unreasonably withheld. The Baseline will not be adjusted to reflect any changes agreed to under this Exhibit N, Section (II)(B)(iii).

iv. Baseline Adjustment. If Contractor proposes changes to the Facilities that would not unreasonably interfere with the conduct of Owner's business or cause Owner to incur additional costs, and Owner does not consent to the changes, then Contractor will adjust the Baselines upward by the amount of savings projected from the changes.

v. Projected Energy Savings. During the Energy Savings Term, when the ultimate effect of the Work on EC Savings cannot be accurately determined due to pending construction or changes to the Scope of Work, Projected Energy Savings for the Facilities will be used until the effect of the changes can be determined by Contractor

vi. Assessment Work. Contractor has the right to charge Owner for Assessment Work, which will be billed at current Contractor engineering rates and will be paid by Owner within thirty (30) calendar days after receiving Contractor's invoice. Before initiating Assessment Work, Contractor will notify Owner in writing of the intent and estimated cost associated with the Assessment Work. Owner will, within forty-five (45) calendar days, give Contractor written permission to proceed or, alternatively at no charge to Contractor, to stipulate that the Projected Energy Savings for the portion of the Facility in question be used for the purpose of meeting the Savings Guarantee for such Measurement Period and thereafter. If Contractor does not receive written notice within forty-five (45) calendar days, the Projected Energy Savings for the portion of the Facility in question will be used until such time as Owner approves the Assessment Work.

vii. Changes in Energy Use Factors. If Owner fails to notify Contractor of changes in Energy Use Factors or fails to supply Contractor in a timely manner with information that is requested by Contractor for the calculation of EC Savings, the Energy Unit Savings for the relevant Measurement Period will be deemed equal to the corresponding Projected Energy Savings for such period. If information for the relevant Measurement Period is supplied at a later date, the Energy Unit Savings will

be modified only if and to the extent that the calculated savings for such period exceed the Projected Energy Savings for such period.

viii. Change Order – Savings Effect. Contractor will calculate the energy impact of any Change Orders.

ix. Changes in Savings Calculations. Any changes made by Contractor to the savings calculations will be presented to Owner in advance. Owner will have thirty (30) calendar days to challenge or question the changes in writing.

x. Inspection of Facilities. Owner agrees that Contractor will have the right, with prior notice, to inspect the Facilities to determine if Owner has consistently complied with its obligations as set forth above. If any inspection discloses that Owner has failed, on or prior to the date of such inspection, to be in compliance with any of its obligations, then the Guaranteed Savings will be assumed to have been achieved for the portion of the Energy Savings Term during which such failure will have existed.

xi. Interference. Owner may not cause, and will take all commercially reasonable steps to prevent any third party from causing, any overshadowing, shading or other interference with the solar insolation that falls on the Generating Facility. Upon discovering, or otherwise becoming aware of, any actual or potential overshadowing, shading or other interference with insolation, Owner will promptly notify Contractor If an unforeseeable overshadowing or shading condition not caused by Contractor or its subcontractors exists and continues for five (5) Business Days or more, Owner agrees that the Guaranteed Savings for such Generating Facility will be reduced based upon such shading condition, and Contractor may present Owner with a proposed reduction to the Guaranteed Savings reflecting such overshadowing, shading or other interference.

C. Owner Maintenance. Beginning at Beneficial Use or Substantial Completion for any portion of the Work, Owner will maintain such portion of the Work and upon Final Completion will maintain the Project, in accordance with the maintenance schedules and procedures recommended by Contractor and by the manufacturers of the relevant equipment, such maintenance to include maintaining all landscaping (including tree trimming) in and around the Generating Facilities.

D. Energy Savings Report. Annually during the Energy Savings Term, Contractor will submit to Owner an energy savings report containing a precise calculation of the EC Savings during the applicable Measurement Period (an "Energy Savings Report"). Contractor will use its best efforts to submit such Energy Savings Report within ninety (90) calendar days after receipt of all needed information for a Measurement Period, unless additional information is needed to accurately calculate the EC Savings, in which case Owner will be notified of such a situation within the ninety (90) calendar-day period.

E. On-Site Measurements. Owner irrevocably grants to Contractor the right, during the Energy Savings Term, to monitor EC Savings and energy management performance by conducting on-site measurements, including, but not limited to, reading meters and installing and observing on-site monitoring equipment. Contractor will not exercise such right in a manner that unreasonably interferes with the business of Owner as conducted at the Facilities as of the date hereof. Owner will cooperate fully with the exercise of such right by Contractor pursuant to this Exhibit N, Section (II)(E). Owner will further cooperate with Contractor's performance of the M&V Services by providing utility information, changes in Energy Use Factors, and/or additional information as reasonably requested by Contractor

F. *Not Used.*

G. Termination of Guaranteed Savings. If (i) Owner notifies Contractor in writing of its intent to terminate the M&V Services, (ii) the Contract is terminated by Contractor for default by Owner or by Owner for any reason permitted by the Contract, (iii) Contractor is no longer the provider of the Maintenance Services set forth in Exhibit O, or (iv) Owner fails to maintain the Project in accordance with this Exhibit N, Section (II)(C), or is in default of any of its other obligations under this Exhibit N, the obligation of Contractor to prepare and deliver the Energy Savings Report and to make a Guarantee Payment will also be terminated. If such termination occurs on a date other than the last day of a Measurement Period, Contractor will have no obligation to make a Guarantee Payment or prepare and deliver an Energy Savings Report for such Measurement Period.

H. *Not Used.*

I. Calculations.

i. Calculation of Accumulated Savings. Accumulated Savings will be increased, for any Measurement Period, by the amount of Excess Savings during such Measurement Period, and will be decreased, for any Measurement Period, by the *difference*, to the extent positive, between (i) the Guaranteed Savings for such Measurement Period *minus* (ii) the EC Savings for such Measurement Period. For the avoidance of doubt, Accumulated Savings will not be reduced below zero.

ii. Calculation of EC Savings. EC Savings for any Measurement Period will be equal to, for such Measurement Period, the Energy Use Savings, in each case as adjusted for changes in Energy Use Factors during such Measurement Period. EC Savings achieved during the Construction Period will be included in the EC Savings for the first Measurement Period.

iii. Calculation of Energy Use Savings. Energy Use Savings will be calculated by Contractor as the *product* of (i) the Energy Unit Savings *multiplied by* (ii) the greater of (a) the applicable Base Energy Rate or (b) the applicable Actual Energy Rate.

iv. Calculation of Excess Savings. From and after the M&V Commencement Date, Excess Savings will be calculated by Contractor as the *difference*, to the extent positive, between (i) the EC Savings for the relevant Measurement Period *minus* (ii) the Guaranteed Savings for such Measurement Period. During the Construction Period, Excess Savings will be calculated by Contractor in the manner set forth in this Exhibit N, Section (III). For the avoidance of doubt, Excess Savings will not be reduced below zero.

v. Calculation of Guarantee Shortfall. The Guarantee Shortfall, for any Measurement Period, will be calculated by Contractor as the *difference*, to the extent positive, between (i) the Guaranteed Savings for such Measurement Period *minus* (ii) the sum of (a) EC Savings for such Measurement Period plus (b) Accumulated Savings then outstanding.

III. Methodologies and Calculations

The following details the methodologies and calculations to be used in determining the Energy Unit Savings under this Contract.

Table E-1: Measurement and Verification Methods

ECM	ECM Description	M&V Method	
		Electric Usage	Water Usage
1	Facilities Water Fixture Retrofits	N/A	Stipulated
2	Water Meter Upgrades	N/A	Option A
3	SCADA & Remote Communication, Pumping, and Automated Water Treatment	Stipulated	N/A
4	Facilities and Pumping Station Lighting Upgrades	Option A	N/A
5	Parks Lighting Upgrades	Stipulated	N/A
6	Streetlighting Upgrades	Stipulated	N/A
7	Sports Lighting Upgrades	Stipulated	N/A
8	Solar Generating Facilities	Option B	N/A

1. M&V Option A: This option allows for the energy savings to be predicted, measured, and agreed upon between Owner and Contractor. One-time measurements and stipulated parameters are used to quantify savings that are stipulated for the term of the Contract.
    a. Contractor will supply a one-time report to Owner detailing the measurements and calculation of savings. If the calculated savings fall short of those expected, Contractor will have the opportunity to remedy the short fall and re-measure and calculate the results. Such work will be done at Contractor's expense and will not be unreasonably denied by Owner, as long as such work does not interfere with Owner's use of the Facilities. These calculated savings will be defined as Energy Unit Savings and will be agreed to occur each Measurement Period. During the Construction Period, the Energy Unit Savings will be calculated by adding the savings measured for the whole months between Substantial Completion or Beneficial Use of the ECM and the M&V Commencement Date.
    b. Scope of Work:

<u>ECM-4 – Facilities and Pumping Station Lighting Upgrades</u>

i. The reduction in units of electric demand (kW) from the installation of the lighting ECMs is to be measured directly using a calibrated true-RMS watt meter or stipulated based on the following parameters. Existing and to-be-installed fixture types will be grouped project-wide, based on the type of fixture (i.e., type of lamp, number of lamps and ballast type) and the assumed wattage. All lamps without ballasts (incandescent), along with exit signs and exterior fixtures, will be stipulated at their manufacturer's rated wattage. Groups of fixtures with ballasts will be measured in the following manner.
    a. For groups with 1,000 or more fixtures, ten (10) or more instantaneous measurements of single fixtures or circuits containing only one type of fixture will be taken. The average wattage per fixture will be calculated and be the measured wattage for that fixture type.
    b. For groups with 500 or more fixtures but fewer than 1,000, seven (7) or more instantaneous measurements of single fixtures or circuits containing only one type of fixture will be taken. The average wattage per fixture will be calculated and be the measured wattage for that fixture type.
    c. For groups with 100 or more fixtures but fewer than 500, four (4) or more instantaneous measurements of single fixtures or circuits containing only one

type of fixture will be taken. The average wattage per fixture will be calculated and be the measured wattage for that fixture type.

d. For groups with 99 or fewer fixtures or where measurements are not physically possible, the measured wattage will be stipulated for that group to equal the wattage defined in *Exhibit R*, showing the existing fixture codes, quantities, and manufacturer's rated wattage for these type fixtures.

ii. Assumptions: The annual unit consumption savings (kWh) for each retrofit will be calculated by multiplying the demand savings as calculated above by the Occupied Annual Hours, where the Occupied Annual Hours have been agreed upon and stipulated to by the City and are presented in *Table E-2* below. The Energy Unit Savings (kWh) will be the sum of the calculated annual unit consumption savings for each retrofit.

Table E-2: Annual Lighting Hours by Room Type – Stipulated

Location	Area Type	Annual Hours
Fire Stations	Electrical/Mechanical/Inactive Storage	360
	Single Restroom	520
	Training Room	520
	Kitchen	728
	Active Storage	1,040
	Bunk / Locker / Open Restroom	1,460
	Open Office	1,560
	Offices	3,120
	Hall / Lobby / Exterior	3,640
Pumping Stations	Electrical/Mechanical/Pump/Storage	364
	Active Storage / Pump Labs	1,560
	Locker / Restroom	2,600
	Offices / Hallway	3,120
	Exterior Attached	4,368
	Wet Well	8,760
City Hall	Storage/Custodian	520
	Electrical/Mechanical/Telecom	1,040
	Restroom	1,560
	Council Chamber	1,560
	Office Space	2,600
	Hall / Lobby	3,120
	Exterior Attached	5,096
	Stairwell / Parking Garage	8,760
Community Center	Electrical/Mechanical/Storage	520
	Kitchen	2,080
	Restroom	2,080
	Office Space	2,600
	Hall / Lobby	3,120
	All Exterior	5,096
Sports Complex	Electrical/Mechanical/Pump	520

	Storage/Custodian	1,040
	Locker / Restroom	2,080
	Office Space	2,600
	Hallway / Lobby / Corridor	3,120
	Exterior Attached / Pool Area	4,368
Library	Exterior	4,368
	Parking Garage	8,760
	Electrical/Mechanical	520
Public Works, Corp Yard	Electrical/Mechanical/Storage	1,040
	Locker / Restroom	1,560
	Offices	2,600
	Open Office	3,120
	Warehouse / Service Bays	3,640
	Exterior Attached	4,368
	Exterior	8,760
Police Department	All Areas	8,760
Senior Center	Electrical/Mechanical/Storage	520
	Restroom	2,080
	Classroom / Office	2,600
	Hallway / Lobby / Corridor	3,120
	Community Room	3,120
	Exercise Space	3,120
	Exterior Attached	4,368
* 15% reduction in the hours shown above will be calculated for spaces with existing or retrofit occupancy sensors.		

iii. Post-retrofit measurements will be performed one time, after the retrofit is complete. Post-retrofit ECM performance is assumed to be consistent for the duration of the Energy Savings Term.

iv. EC Savings achieved from the lighting ECMs are calculated by the following equation:

EC Savings = Energy Unit Savings X Base Energy Rate

Table E-3: Lighting Annual Savings by Site (ECM-4)

Location/ECM	Projected Annual Savings (kWh)
Public Works/Police Dept, City Hall, Senior Center, Community Center, Sports Center, Library, Parking Garage	938,471
FS #1, FS #3, FS #4	69,781
Pumping Stations	72,229
Total	**1,080,481**

ECM-2 – Water Meter Upgrades

i. Baseline Period:
Pre-Replacement Meter Accuracy
In order to determine the additional revenue the Owner will realize from a water meter replacement project, Contractor will perform one-time accuracy tests of existing water meters (PRE) and one-time accuracy tests of the new water meters (POST). The overall average accuracy for each size and type of meter tested will be shown in the following table. The middle column of the table lists the current accuracy applied to the revenue model.

Table E-4: Water Meter Accuracy by Meter Size

	Meter Size	ENGIE Qty of Replacement Meters	Current (PRE) Accuracy applied to Revenue Model	Average (PRE) Measured Accuracy Applied	Average (POST) Measured Accuracy Applied
Small	5/8"	12,295	90.0%		
	3/4"	544	90.0%		
	1"	1,281	90.0%		
	1 1/2"	535	90.0%		
	2"	738	90.0%		
Large	3"	110	98.0%		
	4"	60	98.0%		
	6"	15	98.0%		
	8"	12	98.0%		
	10"	0	N/A		
	Totals	15,590			

ii. Pre and Post-Installation Period:
Pre and Post-Replacement Meter Accuracy
The table below outlines the quantity of meters that will be tested PRE (Existing Meters) and POST (New Meters) of the M&V program. The quantity of meters to be tested is based on the quantity of meters that will be replaced, but existing meter performance is expected to vary over a wider range so more measurements are planned for the Pre-Retrofit meters In general, 0.75% percent of the new meters will be tested while roughly 1.75% of existing meters will be tested. For meters larger than four inches, a larger percentage of meters will be tested, with a minimum of one meter per size and meter type tested, unless the Owner is unable to provide a meter to test.

Table E-5: Water Meter Test Plan by Meter Size

	Meter Size	Existing Quantity of Meters	ENGIE Qty of Replacement Meters	Approximate Qty of Meters Tested (PRE-Retrofit	Approximate Percentage of Meters Tested	Approximate Qty of Meters Tested POST-Retrofit	Approximate Percentage of Meters Tested
Small	5/8"	13,055	12,295	**216**	1.75%	92	0.75%
	3/4"	577	544	**10**	1.80%	4	0.74%

	1"	1,408	1,281	**20**	1.56%	9	0.70%
	1 1/2"	556	535	**9**	1.68%	4	0.75%
	2"	805	738	**12**	1.62%	5	0.68%
Large	3"	179	110	**3**	2.72%	1	0.9%
	4"	126	60	**2**	3.33%	1	1.67%
	6"	47	15	**2**	13.3%	1	6.67%
	8"	86	12	**2**	16.67%	1	8.33%
	10"	4	0	**0**	N/A		
	Totals	16,843	15,590	**275**		**118**	

Meters will be tested according to AWWA test standards consistent with the testing of meters prior to implementation of the replacement program. Replacement (new) meters will shipped to a certified testing facility for bench testing prior to installation. Existing meters will be removed from service during retrofit and shipped to the same certified testing facility for bench testing prior to disposal.

iii. Calculations and Adjustments:

Positive displacement and compound meters are typically tested at low, intermediate and high flows. Turbine meters are tested at high flow and low flow rates. The overall accuracy of the existing meters will be calculated based on AWWA guidelines using weighting factors of 15%, 70% and 15% applied to accuracy tests at low, intermediate and high flow rates, respectively for positive displacement meters. For compound meters, each of the three individual accuracy tests will be weighted equally (33.3%) to determine the overall accuracy. The weighting factors applied to the turbine meter test results are 15% and 85% for low and high flow rate tests, respectively.

The measured accuracy of existing meters and the measured accuracy of new meters will be plugged into the revenue model spreadsheet where the accuracy rates are multiplied by the applicable consumption rate. The consumption rate is stipulated as defined in the Revenue Model and outlined in the methodology for determining additional revenue from the water meter replacement program.

Within the Revenue Model, the additional consumption is multiplied by the escalated water rates provided by Owner, to determine the increase in water and sewer revenues. This increase in water and sewer revenues will be considered EC Savings.

Table E-6: Water Meter Revenue Model Summary

	Meter Size	Estimated Baseline Consumption (CCF)	Projected Added Consumption (CCF)	Additional Revenue
Small	5/8"	302,092	33,566	$225,226
	3/4"	12,978	1,442	$9,676
	1"	74,388	8,265	$55,460
	1 1/2"	92,865	10,318	$69,236

	2"	311,344	34,594	$232,124
Large	3"	122,112	2,492	$16,722
	4"	222,030	4,531	$30,405
	6"	123,540	2,521	$16,917
	8"	190,630	3,890	$26,105
	10"	0	0	$0
	TOTAL	**1,451,979**	**101,620**	**$681,871**

2. M&V Option B: Energy savings performance of Scope of Work are measured and verified at the end-use site. Option B techniques are designed for projects where long-term continuous measurement of performance is desired and warranted. Under Option B, while some parameter may be stipulated or measured once then stipulated, some individual loads are continuously monitored to determine performance; and this measured performance is compared with an equipment-use Baseline to determine the Energy Unit Savings.

    a. Contractor will supply a one-time report to Owner detailing any initial measurements taken to establish usage Baselines or other parameters. Ongoing post-retrofit measurements will be compared to the Baselines, and the quantified Energy Unit Savings will be calculated and presented in ongoing reports. During the Construction Period, the Energy Unit Savings will be calculated by adding the savings measured for the whole months between Substantial Completion or Beneficial Use of the EC Measure and the M&V Commencement Date.

    b. Scope of Work

        i. No baseline measurements are necessary because pre-retrofit PV production is zero. Kilowatt-hours produced by the PV system will be measured using automated metering. Measured interval production kilowatt-hours will be compared against production shown on the monthly utility bills and any differences will be reconciled. Projected kWh production is shown in *Table E-7* below and is projected to degrade by 0.5% per year.

Table E-7: First Year Solar PV Production (ECM-8)

Location/ECM	Projected Annual Production (kWh)
Community Center	116,292
Senior Center	202,470
Total	**318,762**

        ii. Assumptions: Once Work is Substantially Complete, these savings will be measured and verified monthly for the Energy Savings Term.

        iii. Baselines and Projected Savings: EC Savings will be determined by multiplying the Energy Unit Savings by the applicable Base Energy Rate. EC Savings will be calculated and presented in on-going reports.

3. Stipulated Savings: When the cost, complexity, or uncertainty of savings measurements are high as compared to the projected savings, Owner and Contractor may agree to stipulate the projected Energy Unit Savings as being achieved, without any measurements being taken.

a. For the Stipulated Option, the Energy Unit Savings presented below will be agreed to occur each Measurement Period. During the Construction Period, the Energy Unit Savings will be calculated by adding the savings projected for the whole months between Substantial Completion or Beneficial Use of the EC Measure and the M&V Commencement Date.

Table E-8: Stipulated Annual Savings

ECM	Location	Projected Annual Electric Savings (kWh)	Projected Annual Water Savings (CCF)
1	City-Wide	-	3,285
3	City-Wide	798,638	-
5	Parks	143,746	-
6	City-Wide	1,682,791	-
7	Cardoza Baseball Field	40,870	-
7	Cardoza Softball Field	6,223	-
Total		**2,672,268**	**3,285**

4. Base Energy Rates: EC Savings will be calculated using the Base Energy Rates or Actual Energy Rates for that meter, whichever results in greater EC Savings. Actual Energy Rates will be calculated at the end of each Measurement Period using utility billing information for that Measurement Period and using the same methodology as was employed to determine the base energy rate in the Recommendations.

   The Base Energy Rates listed here are to be increased each Measurement Period on a cumulative basis by four and one-half percent (4.5%) beginning on the first anniversary of the M&V Commencement Date and continuing on the first day of each Measurement Period thereafter.

Table E-9: Base Energy Rates

ECM	Location	Electricity Rate ($/kWh)	Water Rate ($/CCF)
1	City-Wide	-	9.05
2	City-Wide	-	6.71
3	City-Wide	0.174	-
4	Public Works/Police Dept, City Hall, Senior Center, Community Center, Sports Center, Library, Parking Garage	0.209	-
4	FS #1, FS #3, FS #4	0.239	-
4	Pumping Stations	0.205	-
5	Parks	0.252	-
6	City-Wide	0.183	-
7	Cardoza Baseball Field	0.233	-
7	Cardoza Softball Field	0.245	-
8	Community Center	0.245	-

8	Senior Center	0.231	-

EXHIBIT O

MAINTENANCE SERVICES

EQUIPMENT AND FACILITIES COVERED

Contractor will perform preventive maintenance services ("Maintenance Services") as set forth in this Exhibit O with respect to Generating Facilities being constructed on the Owner's property at the following Project Locations:

Site Name	Site Address	City	County	State	Zip Code
Senior Center	40 N. Milpitas Blvd	Milpitas	Santa Clara	CA	95035
Community Center	457 E. Calaveras Blvd	Milpitas	Santa Clara	CA	95035

Capitalized terms used in this Exhibit O and not defined in the Contract, have the meanings set forth below:

I. Definitions

"**Annual Maintenance Fee**" means a fee payable annually in advance by the Owner to Contractor, in consideration of the provision of up to ten (10) years of Maintenance Services. The Annual Maintenance Fee for the first five (5) Measurement Periods has already been included in the contract amount.

Payment Schedule:

Measurement Period	O&M Services	Monitoring Services	Annual Maintenance Fee
1	-	-	-
2	-	-	-
3	-	-	-
4	-	-	-
5	-	-	-
6	$19,838	$4,402	$24,240
7	$20,419	$4,534	$24,953
8	$21,018	$4,670	$25,688
9	$21,634	$4,810	$26,444
10	$22,269	$4,954	$27,223

II. Term

So long as the Owner pays to Contractor the Annual Maintenance Fee, Contractor will provide the Maintenance Services, as described herein, up to ten (10) years from the M&V Commencement Date on an annualized basis. At the end of this term, the Owner may:

a. Enter into another agreement with Contractor to perform Maintenance Services
b. Enter into an agreement with another service provider
c. Self-perform preventive maintenance

III. Preventive Maintenance and Monitoring Services Provided

Contractor will provide the following Maintenance Services during the term:

1. Solar Generating Facilities

(a) Inspection: Inspect PV modules, combiner boxes, inverters, isolation transformers, and PV service roof penetrations and support structure on an annual basis.

(b) Testing: Perform voltage testing, amperage testing, and infrared scans of inverters, combiner boxes, disconnects and switchgear on an annual basis.

(c) Monitoring: Monitor system performance on a daily basis.

(i) System performance is evaluated by comparing actual production data and actual local weather data to the production values predicted by PVsyst modeling software. These evaluations are performed monthly; greater-than-predicted degradations may indicate the need for further inspection and possible recommendation for panel washing.

(ii) Reporting: A web portal will be provided for users to view and download solar production data. A monthly email report showing: production for the month, production year to date, and monthly percent of expected production.

(d) Cleaning:

(i) Remove dust, dirt, and debris from outside cabinets of combiner boxes, inverters, transformers, and disconnect switches on an annual basis.

(ii) Wash PV modules and remove accumulated dust and debris on an annual basis.

2. EV-Charging Stations

Location:

Site Name	Site Address	City	County	State	Zip Code
Senior Center	40 N. Milpitas Blvd	Milpitas	Santa Clara	CA	95035

(a) Inspection:

- Check outside unit for any damage
- Check casing of charge
- Check cable plug charger
- Fully extend and test retractor
- Check Led ring
- Open and check internal components of charger
- Check clamps to hold components to dinrails
- Check CCID for rust caused for condensation
- Check connection of power supply to terminal block
- Check connections to PCB

(b) Testing: Measure Power Quality, Voltage, Amperage on Electrical Vehicle Charging station on an annual basis.

3. Battery Energy Storage

Locations:

Site Name	Site Address	City	County	State	Zip Code
Senior Center	40 N. Milpitas Blvd	Milpitas	Santa Clara	CA	95035
Community Center	457 E. Calaveras Blvd	Milpitas	Santa Clara	CA	95035

Component	Task	Frequency
Cabinets	Inspect the outside of the enclosure. Clean if needed. Verify safety grounds on the outside of unit are undamaged and terminated properly. Apply touchup paint to any exposed metal. Inspect and clean outside air inlet grill located on the bottom of the unit.	Annually
HVAC	Remove outside cover and vacuum the condenser coil. Vacuum evaporator coil from inside of unit. Inspect drain line, electrical connections, rotate fans manually without vibration, etc. Verify that the unit is clear of alarms.	Bi-annually
Blower	Clean the outside air inlet grill located on the bottom of the unit. Inspect the blower while unit is operational to verify adequate flow. Remove access cover on inside of unit and clean/change the filter.	Annually
Fire Suppression	Inspect the aerosol cartridges for signs of damage. Verify that the unit is healthy, fault free and that the battery status is good by inspecting the LEDs on controller unit. Inspect the red "Protect wire" sensing wire for signs of damage. This wire is routed on the back side of the battery rack for heat detection. Replace the AAA Lithium 1.5v batteries.	Annually
	The fire suppression system may need to be serviced by qualified service provider. NFPA 2001 provides a suggested schedule and tasks. Consult local code administrator for requirements.	Annually pending local codes
AUX Control	Perform a pull test on all control wiring. Test the EPO function. Record results. Measure and record the 120 VAC control power and all DC power supplies. Verify that the power meter is communicating and performing properly. Record the AC voltages. Run the unit in a charge mode for 15 minutes at full capacity. Open power meter utility and take/save a snapshot of the voltage harmonic distortion. Perform database extraction. Review the temp data and save data for future comparisons.	Annually
	Verify that all high-power connections are torqued properly.	End of year 1, 3, 6 & 9

	Run the unit in a charge mode for 15 minutes at full capacity. Open power meter utility and take/save a snapshot of the voltage harmonic distortion. Perform database extraction. Review the temp data and save data for future comparisons.	Annually
	Verify that all high-power connections are torqued properly.	End of year 1, 3, 6 & 9
UPS	Conduct UPS self-test. Record the test results of the UPS (on-line and on-battery). Verify the UPS is clear of alarms and faults.	Annually
PCS	Inspect the PCS. Clean as needed.	Annually
Batteries	Inspect, clean, and vacuum the battery rack as needed. Inspect the battery BMS enclosures for signs of arcing or degradation.	Annually
	Verify that each battery connection is torqued properly.	End of year 1, 3, 6 & 9

IV. Repair Services

a. If a Generating Facility is damaged and requires safe-off, repair, demolition and/or reconstruction, the Owner must contact the Contractor PV Operations & Maintenance Manager. In the event of damage, any component of the Generating Facility installed by Contractor can be repaired or reconstructed by Contractor at the Owner' request. The Owner must submit a request for quotation to the Contractor PV Operations & Maintenance Manager. Contractor will inspect the damage and provide a written quotation and complete scope of work to the Owner to restore the Generating Facility to normal operational condition. Before proceeding with repairs, Contractor and the Owner must execute a work order, on Contractor's form, for the agreed scope of work and quotation amount. Repair work is done on a time and materials basis. Standard Business Hours are M-F, 7am to 5pm. Non-business Hours & Saturdays Equals 1.5x Rates. Sundays & Holidays Equals 2.0x Rates.

Labor Category		Straight Time
Hourly Rate – PV Electrical Journeyman Technician[1]	$/hr.	County Labor Rate
Hourly Rate – PV Electrical Apprentice Technician[1]	$/hr.	County Labor Rate
Hourly Rate – Engineering[2]	$/hr.	$ 170.00
Hourly Rate – Administrative[2]	$/hr.	$ 65.00
Service call-out - Daily minimum fee	$	$ 550.00
Mileage	$	IRS Rate
Material mark-up %	%	14.00
Lift rental fee	$	Current Market Price

[1]Trade Hourly rate will be adjusted based on the current year of the local prevailing wage determination plus Burden, requirement for either travel or subsistence and lodging, and markup for services being requested.

[2]*Eescalated according to an inflation rate to the year in which service will occur.*

V. Warranty Services

The Contractor PV Operations & Maintenance Manager will also be the Owner' point of contact for all issues related to the Contractor Warranty set forth in of the Contract. The Owner should refer to the Contract for services provided by Contractor to the Owner in relation to manufacturer's warranties. The terms and conditions of the relevant manufacturer's warranties can be found in the operation and maintenance manuals delivered to the Owner at Final Completion.

VII. Services and Equipment to Be Covered by the Owner

Contractor's obligations under this Exhibit O are expressly conditioned upon Owner providing and being responsible for the following, without cost to Contractor:

a. Making the Generating Facilities described herein available to Contractor as of the Contract Effective Date.
b. Operating and maintaining security systems associated with the Generating Facilities.
c. Maintaining all landscaping in and around Generating Facilities including tree trimming.
d. Allowing Contractor and its personnel access as necessary to the Generating Facilities, and any related areas that may be reasonably necessary for performance of the Maintenance Services, including reasonable work, parking, and equipment staging areas.
e. Allowing Contractor and its personnel to access electrical power and other utilities then existing at the Generating Facilities as necessary for Contractor to satisfy its obligations under the Contract.
f. Remediating, pursuant to Applicable Law, any known Hazardous Substances encountered by Contractor during the performance of the Maintenance Services which Hazardous Substances were not deposited by Contractor, including any backfill with clean soil as may be reasonably required.
g. Insuring the Generating Facilities against loss due to acts of God and the public enemy; flood, earthquake, tornado, storm, fire; civil disobedience, sabotage, and vandalism.

Contractor will have no obligation to provide the Maintenance Services to the extent such provision of Maintenance Services is materially adversely affected by the Owner failure to satisfy the conditions set forth in this Exhibit O.

EXHIBIT P

RESILIENCY SERVICES

EQUIPMENT AND FACILITIES COVERED

Contractor will perform Resiliency Services ("Resiliency Services") as set forth in this Exhibit P with respect to the microgrid facilities being constructed on the Owner's property at the following Project Locations:

Site Name	Site Address	City	County	State	Zip Code
Senior Center	40 N. Milpitas Blvd	Milpitas	Santa Clara	CA	95035
Community Center	457 E. Calaveras Blvd	Milpitas	Santa Clara	CA	95035

I. Term

Contractor will provide the Resiliency Services, as described herein, up to five (5) years from the M&V Commencement Date on an annualized basis. At the end of this term, the Owner may:

1. Enter into another agreement with Contractor to perform Resiliency Services
2. Enter into an agreement with another service provider
3. Self-perform services

II. Scope of Work

Contractor will provide the following Resiliency Services during the term:

(a) Event Related Services

i) Owner and Contractor will communicate via email as soon as either party becomes aware that a pre-planned utility power outage (i.e. Public Safety Shutoff Events) is Scheduled. The non-initiating party will promptly respond to the initiating party in confirmation of receipt of the email notification.

ii) Contractor will notify Owner upon utility power outage commencement.

iii) Provide digital signage management for Owner supplied display

a. Alert building occupants of power event status (Planned, Active, Completed)

b. Building occupant tips for extending resilient power coverage.

iv) Contractor will notify Owner upon utility power outage conclusion.

v) Post-event review of resilient system performance with Owner

a. Assess system run-time performance

b. Contractor will calculate the emissions benefit of having renewable based microgrid vs only diesel back-up

c. Recommendations for extending resilient coverage if more time is needed

vi) Assist with implementing lessons learned from review

b) Routine Services

i) Hold and manage backup generator agreement.

ii) Review BESS and PV maintenance to ensure systems are available when needed.

iii) Perform one annual simulated resiliency event readiness test coordinated with Owner (after hours).

a. Review readiness test with Owner.

iv) Perform quarterly review of electric load creep and control system scheduling changes.
    a. Report results to Owner with any revisions of coverage estimate.
v) Provide generator runtime data to Owner to support AQMD permitting.

III. Services and Equipment to Be Covered by the Owner

Contractor's obligations under this Exhibit P are expressly conditioned upon Owner providing and being responsible for the following, without cost to Contractor:

a. Making the Generating Facilities described herein available to Contractor as of the Contract Effective Date.
b. Operating and maintaining security systems associated with the Generating Facilities.
c. Maintaining Stationary Source Permit with the local AQMD.
d. Allowing Contractor and its personnel access as necessary to the Generating Facilities, and any related areas that may be reasonably necessary for performance of the Resiliency Services, including reasonable work, parking, and equipment staging areas.
e. Allowing Contractor and its personnel to access electrical power and other utilities then existing at the Generating Facilities as necessary for Contractor to satisfy its obligations under the Contract.
f. Remediating, pursuant to Applicable Law, any known Hazardous Substances encountered by Contractor during the performance of the Resiliency Services which Hazardous Substances were not deposited by Contractor, including any backfill with clean soil as may be reasonably required.
g. Insuring the Generating Facilities against loss due to acts of God and the public enemy; flood, earthquake, tornado, storm, fire; civil disobedience, sabotage, and vandalism.

Contractor will have no obligation to provide the Resiliency Services to the extent such provision of Resiliency Services is materially adversely affected by the Owner failure to satisfy the conditions set forth in this Exhibit P.

EXHIBIT Q

WATER FIXTURE RETROFITS DETAILED SCOPE OF WORK

Attached.

EXHIBIT R

FACILITIES AND PUMPING STATIONS LIGHTING DETAILED SCOPE OF WORK

Attached.

EXHIBIT S

PARKS LIGHTING DETAILED SCOPE OF WORK

Attached.

EXHIBIT T

SCOPE OF IMPACT SERVICES

From the Contract Effective Date through June 2024, Contractor will provide the following community impact services at City of Milpitas:

I. Professional Services Provided

Living Laboratories: Data points from Contractor-installed photovoltaic panels are input into resident-facing dashboards for real world application:

- Living Laboratory data can be viewed by any City of Milpitas resident or employee with internet access
- Living Laboratory will be available to Owner for three (3) years
- Data from the following sites will be available:
    - Senior Center
    - Community Center

CivicSpark Fellow

- 11-month posting to begin Fall 2020
- Owner to contract directly with CivicSpark for non-financial Fellowship Agreement
- Contractor to provide community outreach materials to Fellow
- Contractor to provide one (1) one-hour per month phone call to check in with and support Fellow
- Contractor to work with Owner to develop Fellow's scope of work, and offer support over the 11-month program
- Fellowship position is contingent upon selection of City of Milpitas by CivicSpark as fellow placement location

Online Sustainability Portal Support: Contractor will work with Owner to integrate the Living Laboratory solar data, the work of the Civic Spark Fellow and other City sustainability initiatives into a Sustainability Page on the City of Milpitas Website.

- Up to 100 hours of support from Contractor in emails, meetings, content creation etc. for the sustainability page

Earth Day Celebration: Contractor will participate in the 2021 City of Milpitas Earth Day Celebration through hosting a booth and sharing project details with the community. Contractor will also support:

- Creative development and printing of a City of Milpitas Sustainability Timeline Poster
- Giveaways and interactive element at Contractor booth

Community Sustainability Event: Partnering with City of Milpitas Public Works Department, Contractor will support the development, planning, and execution of a community sustainability

engagement event, such as a cycling tour of City infrastructure and sustainability initiatives, to be led by Public Works Department.

- Support for up to two (2) events, totaling 150 participants
- Development of event logistics and marketing
- High quality giveaways for participants

Social Media Engagement Strategy: Contractor will support the development of a social media engagement strategy for the City of Milpitas:

- Up to 150 hours of emails, meetings, research, content creation, strategy development and writing from Contractor Communications staff

Award Application Support: Contractor will support the sourcing of and application process for relevant awards to recognize both the Contractor energy project as well as broader sustainability programs in the City of Milpitas. This support will include:

- Conduct or contract for grant search services
- Up to sixty (60) hours of meetings and writing services for grant applications
- Related grant application fees will be covered by Contractor

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Adopt a Resolution to Endorse the 2020-2025 Santa Clara County Community Plan to End Homelessness**
Category:	Community Development
Meeting Date:	10/6/2020
Staff Contacts:	Sharon Goei, Director of Building Safety and Housing, 408-586-3260
Recommendation:	Adopt a resolution to endorse the 2020-2025 Santa Clara County Community Plan to End Homelessness.

Background:

In 2014, the Santa Clara County Continuum of Care (CoC), in partnership with Destination: Home, developed the 2015-2020 Community Plan to End Homelessness, where the community came together to create a five-year countywide roadmap that identified innovative strategies and set goals to create new housing opportunities. To address homelessness in a comprehensive way and to access state and federal funding, the CoC is a collaborative created by a broad group of stakeholders led by the County Office of Supportive Housing to coordinate housing and services funding for homeless individuals. The Community Plan to End Homelessness, which is driven and adopted by the Santa Clara County Continuum of Care, is a prerequisite for receiving CoC funding from the U.S. Department of Housing and Urban Development (HUD).

In January 2019, the Santa Clara County Point-in-Time Homeless Census counted 9,706 homeless residents in the County. Despite the progress made in creating a coordinated supportive housing system, the housing crisis continues to grow statewide and locally. In June 2019, as the timeframe for the 2015-2020 Community Plan was ending, efforts began to develop the next five-year plan – the 2020-2025 Community Plan to End Homelessness ("Community Plan"). Santa Clara County and Destination: Home implemented a community engagement process that involved various stakeholders, including people who have experienced homelessness, subject matter experts, community members and organizations, nonprofit service providers, and public agencies. City staff provided input into the process and disseminated Milpitas' contributions to addressing homelessness. Community feedback was sought to identify challenges in the homeless system of care and to collect innovative ideas on how to reduce and end homelessness countywide.

As the plan was being updated, the coronavirus pandemic in 2020 further exacerbated homelessness. This highlighted the urgency to create a comprehensive response plan for unhoused individuals and families, as well as our residents who are at risk of homelessness.

The 2020-2025 Community Plan builds upon the previous plan and organizes strategies from the community engagement process into three main strategic areas:

Strategy 1: Address the root causes of homelessness through system and policy change;
Strategy 2: Expand homelessness prevention and housing programs to meet the need; and
Strategy 3: Improve quality of life for unsheltered individuals and create healthy neighborhoods for all.

These strategies form the basic framework of the Community Plan. On August 25, 2020, the Santa Clara County Board of Supervisors endorsed the Community Plan and supported working in partnership with stakeholders to implement the plan. The Community Plan is included here as **Attachment B**. Achieving the goals and advancing the strategies in the plan will require broad collaboration across sectors and communities.

Analysis:
On September 17, 2020, City staff submitted an Information Memorandum to the City Council providing a progress update on homelessness response efforts and affordable housing initiatives in Milpitas, including the various actions that the City has taken to address the issues since 2017. The memorandum is included for reference as **Attachment C**.

As discussed in the memorandum, many of the Community Plan strategies are items that the City Council and Housing Subcommittee have advanced and are now included in the Building Safety and Housing Department's work plan. The City has moved forward the three strategies in the Community Plan. For example, to address Strategy 1 and prevent homelessness, Milpitas strengthened tenant protections with the Rent Review and Just Cause Eviction Protection Urgency Ordinances. The City also ensures development of more affordable housing by implementing the Inclusionary Housing Ordinance and advocating for more affordable housing with developers. In addition, the Milpitas Rent Relief Program assists the most vulnerable residents with a wide range of housing needs, most notably rental assistance. Staff and the service provider also connect residents with other supportive services depending on the residents' needs. The Rent Relief Program works to prevent tenant displacement and curb short-term homelessness. Furthermore, through Community Development Block Grant funding to support low-income residents with supportive services such as fair housing, or capital projects to preserve affordable housing, a broad range of services and resources is being provided to prevent homelessness.

The State of California created Project Homekey to protect individuals and families experiencing homelessness or who are at risk of experiencing homelessness. With the $29.2 million Homekey grant award to the County of Santa Clara and affordable housing developer Jamboree Housing, the anticipated conversion of the Extended Stay America hotel to a 132-unit permanent supportive housing facility is proposed to expand the supportive housing system to provide housing and services to the chronically homeless, advancing Community Plan Strategy 2. For homeless outreach, assessment, and case management, staff presented several service options to the Housing Subcommittee recently and continues to research and report on ways to understand and meet the needs of unsheltered Milpitas residents, and to prioritize and coordinate services. Outreach, assessment, and case management are part of Strategy 3 to improve quality of life for unsheltered individuals and create healthy neighborhoods for all.

To implement the Community Plan to End Homelessness, in September, Santa Clara County convened a 30-member Unhoused Task Force. Vice Mayor Bob Nuñez and Councilmember Karina Dominguez were appointed to serve on this task force. With the work plan of the task force guided by Strategy 3, the focus is to identify immediate strategies and emergency solutions for the unhoused that can be implemented quickly. As of the preparation of this report, the final meeting is scheduled for October 15 when the task force will conclude with specific recommendations.

The 2020-2025 Santa Clara County Community Plan to End Homelessness provides a regional-level roadmap to tackle homelessness and its root causes. As described above for Milpitas, the City's progress and approach, as well as activities being planned or implemented, are in alignment with the three strategies to help advance the goals of the Community Plan. Preventing and ending homelessness requires collaboration and coordination of resources at all levels of government, together with community institutions, nonprofit agencies, and community-based organizations.

The recommended action to endorse the 2020-2025 Community Plan to End Homelessness is consistent with the City Council's goal to address homelessness and affordable housing. With homelessness being a regional issue, a countywide plan unifies organizations and communities on long-term strategies and collective solutions to end homelessness.

Fiscal Impact:
There is no fiscal impact associated with the recommendation.

California Environmental Quality Act:
The action being considered has no potential for causing a significant effect on the environment and is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3).

Recommendation:
Adopt a resolution to endorse the 2020-2025 Santa Clara County Community Plan to End Homelessness.

Attachments:
A. Resolution to endorse the 2020-2025 Santa Clara County Community Plan to End Homelessness
B. 2020-2025 Santa Clara County Community Plan to End Homelessness
C. Information Memorandum – Progress Report on City of Milpitas Homelessness Response and Affordable Housing Initiatives

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS ENDORSING THE 2020-2025 SANTA CLARA COUNTY COMMUNITY PLAN TO END HOMELESSNESS

WHEREAS, in 2015, the Santa Clara County Continuum of Care (CoC) and Destination: Home developed the 2015-2020 Community Plan to End Homelessness, where the community came together to create a roadmap that identified innovative strategies for reducing homelessness and set goals to create new housing opportunities; and

WHEREAS, to address homelessness in a comprehensive way and to access state and federal funding, the CoC is a collaborative created by a broad group of stakeholders led by the County Office of Supportive Housing to coordinate housing and services funding for unhoused individuals; and

WHEREAS, the Community Plan to End Homelessness, which is driven and adopted by the Santa Clara County Continuum of Care, is a planning requirement placed by the U.S. Department of Housing and Urban Development (HUD) on CoC funding; and

WHEREAS, despite the progress made in creating a coordinated supportive housing system, the housing crisis continues to grow statewide and locally; in 2019, over 9.700 residents found themselves homeless in Santa Clara County; and

WHEREAS, in June 2019, the Santa Clara County Continuum of Care and Destination: Home began embarking on a community engagement process to develop a new five-year plan, the 2020-2025 Community Plan to End Homelessness ("Community Plan"); and

WHEREAS, during the development of the new Community Plan, feedback was sought from a variety of stakeholders in the community to identify challenges in the homeless system of care and to collect innovative ideas on how to reduce and end homelessness countywide; and

WHEREAS, this work resulted in the development of strategies that fall into three main strategic areas: (1) Address the root causes of homelessness through system and policy change; (2) Expand homelessness prevention and housing programs to meet the need; and (3) Improve quality of life for unsheltered individuals and create healthy neighborhoods for all; and

WHEREAS, many of the Community Plan strategies are items that the Milpitas City Council has advanced, including policies and programs implemented by the Building Safety and Housing Department, and activities being planned or implemented are in alignment with the Community Plan to help advance its goals; and

WHEREAS, with homelessness being a regional issue, preventing and ending homelessness requires collaboration and coordination of resources at all levels of government, together with community institutions, nonprofit agencies, and community-based organizations; and

WHEREAS, the Community Plan provides a regional-level roadmap and a common agenda for community stakeholders that, if followed, will result in a collective impact on ending homelessness; and

WHEREAS, the City Council considered this resolution at a regular meeting of the City Council on October 6, 2020.

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

The City Council hereby endorses the 2020-2025 Santa Clara County Community Plan to End Homelessness.

PASSED AND ADOPTED this _____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Rich Tran, Mayor

APPROVED AS TO FORM:

_____
Christopher J. Diaz, City Attorney

Considered: 08/25/2020

SANTA CLARA COUNTY

COMMUNITY PLAN TO END HOMELESSNESS

2020–2025

Acknowledgements

The Community Plan Steering Committee would like to thank the many community stakeholders, people with lived experience of homelessness, and organizations for their participation in the process to update the plan and their valuable input.
For a full list of organizations that participated in the process, see page 14.

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2 Introduction

4 Our Homelessness Crisis

6 Ending Homelessness in Santa Clara County

7 The Strategies

9 Strategy 1: Address the Root Causes of Homelessness Through System and Policy Change

11 Strategy 2: Expand Homelessness Prevention and Housing Programs to Meet the Need

12 Strategy 3: Improve Quality of Life for Unsheltered Individuals and Create Healthy Neighborhoods for All

14 Thank you!

Introduction

In 2015, the community came together to create a roadmap for ending homelessness in Santa Clara County. This plan— which was centered around a collective impact response and the proven Housing First model—set an ambitious goal to create 6,000 new housing opportunities and identified innovative strategies and programs for reducing homelessness.

Supportive Housing System Progress 2015-2019

Thanks to the collective efforts of partners throughout the community, over the past five years, we have done the following:

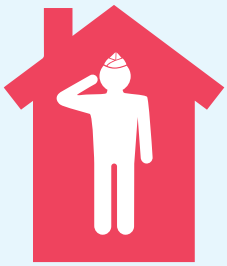
Helped **8,884 households** resolve their homelessness,

representing **14,132 people**

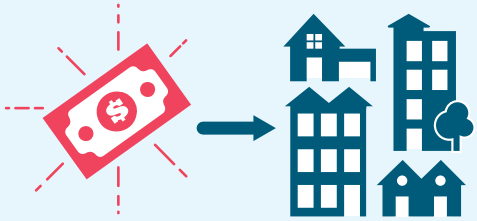
Doubled the number of supportive housing units in Santa Clara County

Doubled our temporary housing and emergency shelter capacity

Launched a new homelessness prevention system that now serves about **1,000 households annually**



Led a community-wide campaign that has successfully housed more than **1,600 veterans** and engaged nearly **800 private landlords** in the effort



Voters approved **$950 million** to develop affordable housing through the 2016 Measure A Affordable Housing Bond and raised another **$100 million** in private contributions to support the implementation of the community plan

Despite our progress creating a supportive housing system that assists thousands of homeless individuals and families each year, the crisis continues to grow. The systemic factors driving homelessness in our community— from the failed policies at the local, state, and national level to the extreme lack of housing options that are affordable for low-income residents—remain stronger than ever and are pushing more of our neighbors onto the streets every day.

These challenges have been compounded by the novel coronavirus (COVID-19) pandemic that arrived in our community as this plan was in development, making implementation of many of these strategies even more urgent. This public health crisis has ground our local economy to a halt, leaving many more households on the brink of homelessness due to job loss, lack of childcare, and economic uncertainty. The pandemic has also required a massive and immediate response by our crisis response system to quickly ramp up shelter capacity, increase access to hygiene services for people living outside, and protect those people experiencing homelessness who are particularly vulnerable. As a result, as this plan goes into effect, we anticipate there will be many more people experiencing or at risk of homelessness who will need immediate support, which will require our community to continue to be flexible and innovative in our responses to homelessness.

To truly end homelessness in Santa Clara County, we must summon the collective will and resources to not only respond to the current crisis and scale our successful housing strategies, but also address and eliminate the root causes of homelessness in our community.

Community Plan Steering Committee Members

Ky Le, Co-Chair

Erin Connor

Joel John Roberts

Jennifer Loving, Co-Chair

Katherine Harasz

Claudine Sipili

Jan Bernstein Chargin

Miguel Marquez

Leland Wilcox

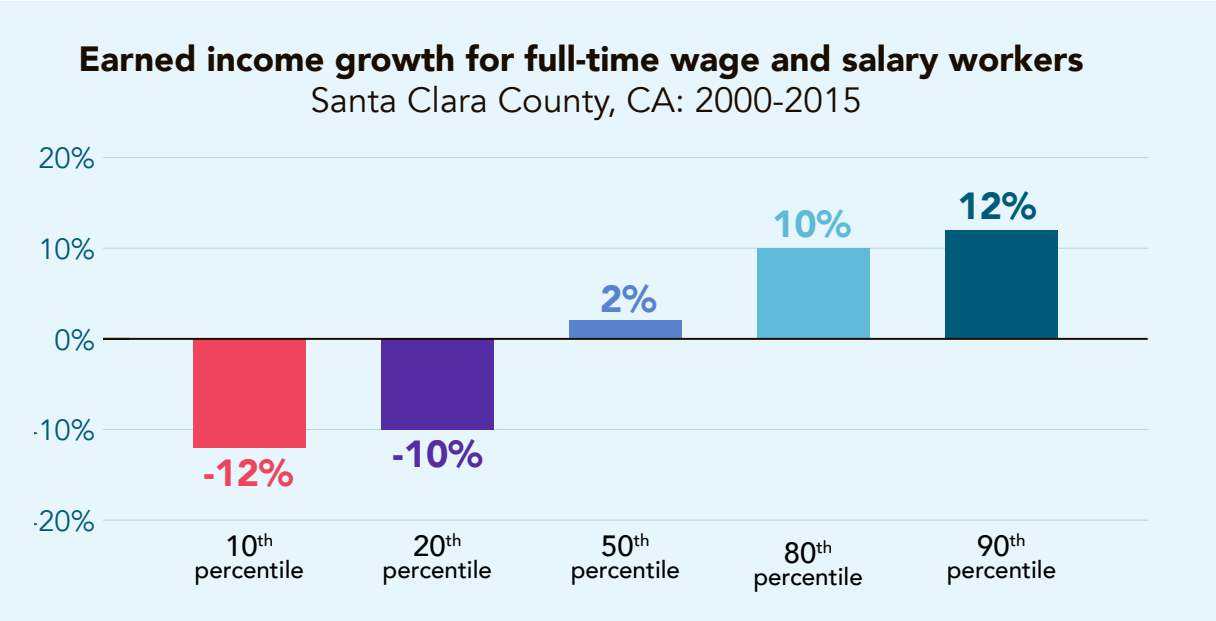
Louis Chicoine

Jacky Morales-Ferrand

Our Homelessness Crisis

According to the 2019 Point-in-Time count, there are 9,706 individuals experiencing homelessness on any given night in Santa Clara County.[1] Families with children, seniors, individuals with disabilities, veterans, youth and young adults are all represented in the county's diverse homeless population. More than 80% of these individuals are unsheltered—sleeping outside, in cars, or other places not meant for human habitation. We expect that these numbers will increase over the coming months as the full impact of the COVID-19 pandemic is felt.

The gap between the rich and the poor in our community, combined with the lack of housing development particularly at the lowest income levels, is fueling the homelessness crisis. According to the Public Policy Institute of California, families at the highest income levels in the Bay Area (the 90th percentile) have more than 12 times the income of families at the bottom (the 10th percentile).[2] Those at the bottom rung of the economic ladder have also not shared in the region's significant economic growth. Between 2000 and 2015 in Santa Clara County, workers with earnings in the 10th percentile saw their income decline by 12%.[3]



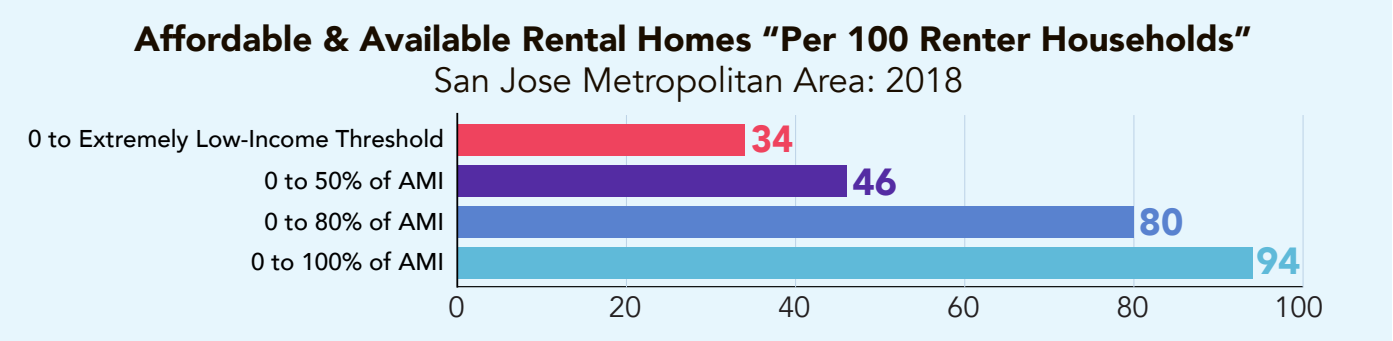
This income inequality has been further exacerbated by the economic slowdown caused by the COVID-19 pandemic as many low-income households living paycheck-to-paycheck struggle to make rent and pay for other basic needs.

[1] Applied Survey Research, "Santa Clara County Homeless Census & Survey Comprehensive Report 2019." 2019. https://www.sccgov.org/sites/osh/ContinuumofCare/ReportsandPublications/Pages/HomelessnessCensusandSurvey.aspx

[2] Public Policy Institute of California, "Income Inequality in California." 2020. https://www.ppic.org/publication/income-inequality-in-california/

[3] Bay Area Equity Atlas, "Earned income growth for full-time wage and salary workers: Santa Clara County, CA, 2000–2015." https://bayareaequityatlas.org/indicators/income-growth#/?geo=04000000000006085

Compounding the impacts of this inequality is the fact that housing costs are higher than ever and housing that is affordable to the lowest-income families is not being produced. In fact, the National Low-Income Housing Coalition's most recent report, The Gap: A Shortage of Affordable Homes, found that in 2018 there were only 34 affordable and available units for every 100 extremely low-income renter households in the San Jose metro area.[4]



In addition, longstanding and structural racial inequities continue to affect who becomes homeless in our community. A recent report commissioned by Destination: Home found that people of color are dramatically more likely than their white counterparts to become homeless in Santa Clara County, and that poverty alone cannot explain disparities in homelessness. For example:

While the brunt of this crisis is borne by our unhoused neighbors, we know its impacts are felt much more broadly. Our neighborhoods, first responders, businesses, and environment are also suffering the consequences of our region's severe homelessness crisis.

Even worse, the problem continues to grow as more people are slipping into homelessness than ever before—the result of growing income inequality, gentrification and displacement, rising housing costs, an extreme housing shortage, and a lack of sufficient safety net services to adequately care for the most vulnerable in our community. In fact, for every homeless family or individual we connect to housing, between two and three more are experiencing homelessness for the very first time.

If this trend continues, in addition to the nearly 10,000 individuals currently experiencing homelessness, another 20,000 are at-risk of falling into homelessness over the next five years—far more than our supportive housing system currently has the capacity to serve.

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[4] National Low-Income Housing Coalition, "The Gap: A Shortage of Affordable Homes." 2020. https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2020.pdf

Photo of Villas on the Park. Courtesy of Dahlin Group Architecture Planning and Mark Davidson Photography

Ending Homelessness in Santa Clara County

Solving this crisis is one of the great moral challenges facing us. It will require tremendous effort, new partnerships, and even bolder strategies—and it will require the entire community to be a part of the solution.

We must take immediate actions that can improve the quality of life for the huge number of unsheltered residents in our community. We must increase shelter capacity and increase interim housing options, and we must expand services to meet their basic health and safety needs.

We need to significantly scale our housing development and programs to meet the growing need in our community. This includes building many thousands more supportive housing units, expanding our homelessness prevention strategies, and enhancing the way our supportive housing system serves those in need.

Most importantly, we will never end homelessness in our community if we do not attack the systemic root causes that continually push more of our neighbors into homelessness. As a result, we must address inequitable land use and housing policy to allow every jurisdiction to achieve their Regional Housing Needs Allocation goals for very low and extremely low-income housing production. We must ensure every resident who is able to work can access living wage employment and we must reverse decades-long structural inequities that have driven people of color and other vulnerable residents onto the streets.

> **As we implement the strategies in this plan, we will raise the voices of people with lived experience and share power with our unhoused and recently-housed neighbors. We will focus on policies and programs that reduce racial inequity, in an effort to reverse the disproportionately high rates of people of color who are unhoused.**

None of this will be easy or cheap. In fact, just meeting the affordable housing needs of our community would require several billion dollars. But we cannot accept a future in which thousands of our neighbors are forced to live outside. Every member of our community deserves a safe and stable home—and it is our collective responsibility to make this vision a reality.

Our Plan

The 2020–2025 Community Plan to End Homelessness will serve as our roadmap for ending homelessness in Santa Clara County and is organized around three main strategies:

Address the root causes of homelessness through system and policy change

Expand homelessness prevention and housing programs to meet the need

Improve quality of life for unsheltered individuals and create healthy neighborhoods for all

The strategies included in this plan are grounded in evidence-based practices, lessons learned over the past five years, and robust conversation and input from more than 8,000 members of our community; including people with lived experience of homelessness, subject matter experts, key stakeholders, and community members.

In addition, this plan sets aggressive targets designed to reverse the current growth in homelessness we are experiencing and bring us one step closer to our collective goal of eliminating homelessness in our community.

By 2025, we will:

Achieve a **30% reduction** in annual inflow of people becoming homeless*

House **20,000 people** through the supportive housing system

Expand the Homelessness Prevention System and other early interventions to serve **2,500 people per year**

Double temporary housing and shelter capacity to reduce the number of people sleeping outside

Address the **racial inequities present** among unhoused people and families and track progress toward reducing disparities

*The reduction in annual inflow target was based on annual inflow prior to the COVID-19 pandemic. This target will be reevaluated once the longer term impacts of COVID-19 are known.

The Strategies

Reaching these ambitious goals will require a collaborative community response based on proven, evidence-based strategies to end homelessness as well as innovative approaches that maximize the resources available.

The strategies are organized under three areas of focus that make up the basic framework for the plan.

STRATEGY 1

Address the Root Causes of Homelessness Through System and Policy Change

To end homelessness in our community, we must address its root causes. This plan sets a five-year goal of reducing new unhoused individuals and families in a given year by 30%. The strategies below are targeted to address the entrenched economic and societal causes of homelessness through transformational systemic and policy change. The system we live in has created social, economic, and racial disparities and it will take monumental shifts in policies and priorities to make effective change. While eliminating these disparities across our community will take more than the five years covered by this plan, we can make substantial progress towards this important goal by implementing the strategies below.

1 Ensure that people accessing safety net services have the support they need to obtain and maintain housing.

A Adopt housing screening and referral processes for individuals and families accessing safety net services.

B Expand housing programs for families involved in the child welfare system.

C Expand and diversify housing programs for foster youth to meet their long-term housing needs, so no foster youth become homeless.

D Expand housing resources available to Medi-Cal recipients accessing services in the Specialty Mental Health System.

E Advocate for the state and the federal government to increase funding and access to safety net services.

2 Ensure that people involved in the criminal justice system do not become homeless.

A Support households with incarcerated family members to prevent homelessness.

B Expand existing and develop new housing and workforce development programs to successfully reintegrate people leaving probation, parole, jails, and prisons into the community.

STRATEGY 1 Address the Root Causes of Homelessness Through System and Policy Change *(Continued)*

3 Create the conditions to develop enough affordable housing to meet the need in our community.

A Work with cities to change local land use and housing policy to allow for development of more affordable housing and help reverse housing disparities that have negatively impacted people of color.

B Identify underutilized land across the county to be used for dense affordable housing development.

C Prioritize development of housing for extremely low-income individuals and families making 30% of Area Median Income or less and set joint targets.

D Advocate for flexible funding that can speed up and create more affordable housing.

4 Protect residents from evictions, displacement, and housing discrimination.

A Adopt and implement new fair housing plans for the region.

B Strengthen local rent control and tenant protections.

C Provide legal assistance to ensure that individuals and families most severely impacted by the lack of affordable housing, namely people of color, have equal access to housing.

D Create a fund to preserve both naturally affordable and income-restricted affordable housing.

5 Ensure all residents who are able to work have access to living wage employment.

A Support efforts to increase the minimum wage to a living wage in Santa Clara County.

B Partner with corporations to create living wage job opportunities for people who are unhoused or at risk of homelessness.

C Provide training, internships, and mentorships to help people who are unhoused or at risk of homelessness to obtain access to living wage jobs.

D Invest in social enterprises that train and employ people who are unhoused or at risk of homelessness.

6 Expand public and private sector support for ending and preventing homelessness.

A Increase community engagement and support for affordable and supportive housing development throughout the county.

B Provide leadership opportunities for people with lived experience of homelessness to shape how we address homelessness in our community.

C Create a county-wide education campaign that increases awareness of the causes and impacts of homelessness and ongoing efforts to end homelessness.

STRATEGY 2

Expand Homelessness Prevention and Housing Programs to Meet the Need

While Strategy 1 aims to close the gaps in our social safety net and address the other systemic causes of homelessness, we know that there will be some people over the next five years who will still become unhoused due to a severe shortage of affordable and accessible housing. To end homelessness, we will need to continue to build capacity to provide a broad array of housing and services over the next five years.

1 Increase the capacity of supportive housing programs for people experiencing homelessness.

A Expand the supportive housing system to provide housing and services to help 20,000 unhoused people secure stable, permanent housing. Expansion would target the following:

- 7,000 people housed in Permanent Supportive Housing programs that provide long-term support.
- 10,000 people housed through Rapid Rehousing programs that provide short- and medium-term support.
- 3,000 people housed through Housing Problem Solving and other short-term or one-time assistance.

B Develop programs tailored to the needs of specific populations of people experiencing homelessness, including:

- Youth and young adults
- Older adults (55+) and seniors
- Families with children
- Adults (ages 25 to 54) without children

2 Provide a broad range of supports to prevent homelessness.

A Expand the Homelessness Prevention System to prevent homelessness for an additional 7,000 households who are at risk by providing targeted financial assistance and supportive services.

B Provide targeted financial resources to prevent homelessness and eviction for severely rent-burdened residents living in existing affordable units.

3 Create a state-of-the-art supportive housing system.

A Center the voices of people who have lived experience of homelessness, especially people of color, in the policy and program design decisions of the supportive housing system.

B Invest in professional development and competitive pay to attract and retain a highly qualified workforce of homeless service provider staff.

C Incentivize hiring of people who have lived experience of homelessness to reflect the client population—especially people of color and LGBTQI+ persons.

D Increase access to supportive housing programs for people of color by addressing racial bias in our system.

STRATEGY 3

Improve Quality of Life for Unsheltered Individuals and Create Healthy Neighborhoods for All

The first two strategies of the plan seek to end and prevent homelessness for as many people as possible over the next five years. However, the reality is that many people will remain unhoused due to an extreme housing crisis and increasing income inequality. To address this immediate crisis in our community and ensure healthy neighborhoods for all, we must begin by doubling our temporary housing and shelter capacity to serve 2,000 additional households each night and increase investment in health, safety and other basic services to better meet the needs of people living in unsheltered conditions and build connections to housing programs and safety net services offered throughout the county.

1 Double the number of year-round temporary housing beds and offer a variety of welcoming temporary housing options throughout the county.

A Build new partnerships to host emergency shelter, safe places to park and access services, and sanctioned encampments that are not swept and include hygiene and supportive services.

B Reduce barriers to shelter such as allowing for pets, storage of personal items, greater privacy, longer stays, and provide higher levels of safety for residents.

C Expand hours at new and existing shelters to remain open during the day.

D Ensure that all families with children under 18 years old who are unhoused have access to emergency shelter or temporary housing.

E Provide more public services in neighborhoods hosting emergency shelter or temporary housing programs.

2 Increase street outreach, hygiene services, and transportation options to match the needs of unsheltered residents.

A Increase access to basic hygiene resources, including bathrooms, showers, and laundry

B Increase the number of free public transit passes and other transportation options for people who are unhoused to access services.

C Increase the number of street outreach staff and case managers working in encampments.

D Provide opportunities for people who have lived experience of homelessness to provide peer-to-peer support.

3 Increase mental health and substance use services.

A Increase the number of mobile crisis teams with clinical staff, and expand their hours, to support individuals experiencing severe mental health and substance use crises.

B Increase the number of beds available for substance use treatment and provide the follow-up supportive services needed to prevent relapses.

C Increase access to mental health treat-ment for people who are unhoused and struggling with mental illness.

D Develop a plan to eliminate service access and treatment gaps for unsheltered people struggling with chronic and severe mental illness.

STRATEGY 3 Improve Quality of Life for Unsheltered Individuals and Create Healthy Neighborhoods for All *(Continued)*

4 Engage a cross-section of community partners to address the needs of unsheltered residents.

A Increase outreach to city and County staff and business and neighborhood associations about available resources to assist people who are unhoused.

B Engage the private sector to contribute funding to support health and safety services and shelter for people who are unhoused.

C Increase coordination between agencies engaging people living in encampments to ensure consistent and humane approaches to encampment resolution.

D Create a referral system where unhoused residents can access information and services, such as available temporary housing and homeless services.

5 Ensure that community spaces are safe and welcoming for housed and unhoused residents.

A Partner with new private sector, community-based, and faith-based organizations to create safe and welcoming community spaces in every community for unhoused people to access services during the day.

B Work with community organizations, cities, County agencies, and neighborhood associations to ensure that public spaces such as parks, libraries, and community centers remain clean, well-maintained, and welcoming to all.

Process Improvements Across Strategies 1, 2, and 3

Throughout our work, we must continue to expand coordination between systems, increase the use of data to improve programs, and increase training opportunities for all partners, including:

- Share data across safety net, criminal justice, and housing systems to better predict and target households who are experiencing homelessness or at risk of homelessness.
- Better utilize data collected in the homeless system of care and across County departments to know what is working well, what programs need improvement, and to identify inequities in the system.
- Provide demographic data, including race and ethnicity, in all reports on homelessness to highlight and address inequities.
- Create accessible dashboards that show our progress and hold our systems accountable.
- Provide trauma-informed care and racial equity/anti-racism training to all staff working with people experiencing homelessness.
- Increase access to services, including providing system navigation resources and training to all staff working with people experiencing homelessness.
- Align racial equity work in the homelessness sector with other racial equity initiatives in Santa Clara County.
- Expand partnerships with corporations, philanthropic institutions, and individual donors to secure private funding to reduce and prevent homelessness.
- Align and coordinate with other community efforts to address homelessness, such as the Homelessness Task Force.

Thank You!

The Community Plan Steering Committee would like to thank the following agencies and staff who participated in the Community Plan Work Group to gather community input and update the community plan:

- County of Santa Clara: Jackie MacLean, Hilary Barroga, Kathryn Kaminski, Hilary Armstrong
- City of San José: Sarah Zárate, Ragan Henninger
- Destination: Home: Ray Bramson, David Low
- City of Morgan Hill: Rebecca Garcia
- City of Mountain View: Wayne Chen
- LifeMoves: Bruce Ives
- Sacred Heart Community Service: Erin Stanton
- Community Solutions: Erin O'Brien

The Steering Committee and Work Group would like to thank the many people who are currently or formerly unhoused who shared their input and experiences to inform the community plan, including the following:

- Lived Experience Advisory Board
- Sacred Heart's Survivors of the Streets
- HomeFirst Sunnyvale Shelter's Client Collaborative
- Clients/residents from Hope's Corner, Bill Wilson Center, New Haven Inn, and Second Street Studios

The Steering Committee and Work Group would like to thank the following community stakeholders, agencies, and organizations for participating in the process:

- Abode Services
- Alta Vista High School
- Amigos de Guadalupe
- Anthem Blue Cross
- Bill Wilson Center
- Bitfocus
- Catholic Charities of Santa Clara County
- Charities Housing
- Cisco
- Cities Association of Santa Clara County
- City Team
- City of Cupertino
- City of Morgan Hill
- City of Mountain View
- City of Palo Alto
- City of San José
- City of Milpitas
- City of Santa Clara
- Community Services Agency
- Community Solutions
- County of Santa Clara:
  - Behavioral Health Services
  - Office of the District Attorney
  - Probation Department
  - Public Defender Office
  - Public Health Department
  - Reentry Services
  - Santa Clara Valley Medical Center
  - Social Services Agency
  - Office of Supportive Housing
  - Office of Equity and Social Justice
  - Offices of Supervisors Cindy Chavez, Dave Cortese, Susan Ellenberg, Joe Simitian, and Mike Wasserman
  - Valley Homeless Healthcare Program
- David and Lucile Packard Foundation
- Destination: Home
- Dependency Advocacy Center

- Downtown Business Association
- Downtown Streets Team
- EAH Housing
- East Side Union High School District
- Family Supportive Housing
- First Community Housing
- Gilroy Compassion Center
- HomeFirst
- Housing Trust Silicon Valley
- Humane Society of Silicon Valley
- Hunger at Home
- Kaiser Permanente
- Kids in Common
- Law Foundation of Silicon Valley
- LifeMoves
- LinkedIn
- Los Altos Community Foundation
- Mental Health Systems
- Next Door Solutions
- On Lok
- PATH
- Razing the Bar
- Resources for Community Development
- Santa Clara County City Managers Association
- Santa Clara County Housing Authority
- Santa Clara County Office of Education
- Santa Clara County Domestic Violence Advocacy Consortium
- Santa Clara Family Health Plan
- Sacred Heart Community Service
- Salvation Army
- Silicon Valley Community Foundation
- Silicon Valley Council of Nonprofits
- Silicon Valley at Home
- Silicon Valley Independent Living Center
- Silicon Valley Organization
- South Bay Coalition to End Human Trafficking
- Spectrum Equity
- St. Joseph Family Center
- Sunnyvale Community Services
- The Health Trust
- United Way Bay Area
- U.S. Department of Veterans Affairs
- West Valley Community Services
- YWCA of Silicon Valley

MEMORANDUM

Building & Housing Department

DATE: September 17, 2020

TO: Mayor and Councilmembers

THROUGH: Steve McHarris, City Manager

FROM: Sharon Goei, Building Safety and Housing Director

SUBJECT: **Progress Report on City of Milpitas Homelessness Response and Affordable Housing Initiatives**

Background:

On September 1, 2020, Mayor Tran asked the City Manager to share information regarding the City's progress in providing resources to homeless residents over the years, including allocations in the City's budget. This memorandum describes programs, policies, and budget actions that the City of Milpitas has taken since 2017.

In 2019, California was home to over 151,000 homeless individuals; the largest homeless population of any state in the nation.[1] In the San Francisco Bay Area, homelessness has continued to grow in recent years. In 2019, the Santa Clara County Homeless Census counted 9,706 homeless residents, a 31% increase since 2017.

On a biennial basis, the County partners with a research firm to conduct a count of the local homeless population in order to measure the prevalence of homelessness in the region. Known as a point-in-time count, the survey is performed using HUD's definition of homelessness and consists of the following primary components: 1) General street count, which is a count of unsheltered homeless individuals and families that are living outdoors on the streets, at bus and train stations, in parks and tents, and in vehicles and abandoned properties; 2) general shelter count, which is a count of individuals and families temporarily housed in shelters, including emergency shelters, transitional housing, and safe havens. For Milpitas, the point-in-time homeless count was 95 in 2013, 122 in 2015, 66 in 2017, and 125 in 2019.

It is important to note that the Homelessness Census has limitations, as it is a count of street homeless and homeless at temporary shelters at a specific point in time. The point-in-time count does not account for persons who live in overcrowded conditions, in inadequate or unstable housing. It does not include all the students in the School District McKinney-Vento program because the program is established under the Federal McKinney-Vento Homeless Assistance Act, which has a broader definition of homelessness. The Act defines homeless children and youths as individuals who lack a fixed, regular, and adequate nighttime residence, and includes children and youths who are sharing the housing of other persons, living in motels, hotels, trailer parks, emergency or transitional shelters, cars, parks, public spaces, abandoned buildings, substandard housing, and bus or train stations. As of September 16, the Milpitas Unified School District (MUSD) reported 397 students qualified as McKinney-Vento and was in the process of adding two more. The McKinney-Vento data is updated whenever a new student is verified. While the HUD's definition of homeless for the point-in-time count and McKinney-Vento definition of homeless have some overlap, MUSD believes there is little duplicate count, which helps

[1] U.S. Interagency Council on Homelessness, 2019

staff assess the needs of this vulnerable population and the growing impacts associated with the COVID-19 pandemic.

Analysis:

Over the past several years, the City has actively addressed a myriad of homeless and housing issues. The City Council has enacted ordinances and created programs, including advancing initiatives through the proactive work of the Housing Subcommittee that the City Council established in May 2019. With new City management and leadership that implemented enhancements in the housing function, a new housing division was created with staffing roles to carry out Council priorities toward affordable housing and homeless response in Milpitas. In the past year and a half, City management and leadership built a new housing team, and City staff as a whole has made positive advancements in implementing Council policy and direction in the areas of homelessness and housing.

To best summarize the City's progress, Council actions and staff implementation are organized into three categories below: Protection, Production, and Preservation. These categories, or three Ps, have been widely adopted by the region, and they reflect the core pillars of the region's approach to solving the housing crisis. The following is a summary of the City's specific actions that prevent and address homelessness.

Protection:

- Rent Relief Program:
  In October 2019, the City Council created a Pilot Rent Relief Program designed to assist the most vulnerable residents in Milpitas with a wide range of housing needs, most notably rental assistance. The City Council approved an initial allocation of $100,000 in rent relief funding. In March 2020, due in part to the positive impact of the program in preventing tenant displacement and curbing short-term homelessness, the City Council authorized a second $100,000 allocation to continue funding at-risk residents. In June 2020, the City Council authorized an additional $341,400 through the Community Development Block Grant process to the Rent Relief Program to further address the impact COVID-19 has had on the landlord and tenant community. The Council also authorized the removal of "Pilot" from the program's name.

  In summer 2020, the City applied for and secured its first competitive grant of $70,000 for the Rent Relief Program from the Santa Clara County Emergency Food and Shelter Program. As of this progress report, over $600,000 has been earmarked for rent relief with over $250,000 expended in assisting 51 families with a total of 185 residents. City staff continues to work with the Silicon Valley Independent Living Center, the Milpitas Unified School District McKinney-Vento program, Project Sentinel, Next Door Solutions to Domestic Violence, the City of Milpitas Police Department, the Milpitas Senior Center, and other organizations to connect clients in need of assistance.

- Rent Review and Just Cause Eviction Protection Urgency Ordinances:
  In October 2019, the City Council adopted urgency ordinances 302 and 303. Urgency ordinance 302 established the Rent Review Ordinance, which created a safe space for residents who were given a rent increase in excess of 5% to request rent review with their landlord without fear of retribution. The ordinance strengthened rent increase notification requirements, tenant protection such as source of income discrimination, and prohibited landlord retaliation.

Urgency Ordinance 303 created a temporary just cause eviction moratorium in Milpitas until December 31, 2019, as the just cause eviction protections implemented by State Assembly Bill 1482 would take effect on January 1, 2020. This temporary ordinance ensured the protection of residents from landlords looking to unjustly evict residents during this short period of time when no-cause evictions were permitted for a subset of the population. This helped prevent the displacement of tenants and decreased the risk of tenants becoming homeless. Milpitas was one of the first cities across the state to enact an urgency ordinance for just cause eviction protection.

- Community Development Block Grant (CDBG) Funding:
  Each year, the City Council allocates funding through the CBDG process to support the needs of low- to moderate-income residents. Since 2017, the following allocations have been awarded to support housing and community development needs:

  - The Milpitas Food Pantry received a total of $54,656 to support the food and nutrition needs of Milpitas' most vulnerable residents. Over 3,000 residents have secured food assistance from the Milpitas Food Pantry through the use of these funds.

  - Project Sentinel provides fair housing and tenant-landlord counseling and dispute resolution services to the City of Milpitas. The City has allocated a total of $131,290 in CDBG and Housing Authority funding. Through its services, workshops, and other events, Project Sentinel has assisted over 1,000 Milpitas residents.

  - In June 2020, the City awarded $50,000 to Project Sentinel to implement the 'It Takes a Village' approach to providing rental assistance. This approach uses Project Sentinel's mediation team to assist a tenant in need of rental assistance by negotiating directly with their landlord and potentially the landlord's lender to provide relief from rent and/or mortgage payments. The program is estimated to assist a minimum of 10 households.

- City Collaboration and Outreach:
  The Building Safety and Housing Department team has increased our collaborative effort in assisting residents. As the Building Inspection and Code Enforcement teams work in the field and interact directly with residents at their homes, they are taking note of residents with housing needs. The Housing team is provided contact information to connect with at-risk residents, provide assistance, and to refer these individuals to resources. During the past year, the Building Inspection and Code Enforcement teams have assessed homes in disrepair as well as substandard housing with safety and habitability issues. In cases where there are no alternative housing resources, Building Inspection and Code Enforcement teams refer residents to the City's Housing team who connect the residents with resources and community-based organizations.

  In 2017, the Milpitas Police Department received California Board of State and Community Corrections (BSCC) grant funding and $80,568 of this grant was designated towards establishing a Homeless Outreach Team. This team performs outreach on an ancillary basis to public safety responsibilities. The team uses the County's Mobile Crisis Response Team for homeless residents with mental health issues and provides courtesy transportation to Valley Medical Center Emergency Psychiatric Services for those wanting to speak with a clinician. Additionally, officers serve as liaisons with allied agencies such as the Milpitas Public Works Department, Building Safety and Housing Department, Milpitas Unified School District, Union Pacific Railroad, the Valley Water District, and Caltrans. The funding also includes essential supplies such as nourishment kits, hygiene equipment, clothing, blankets, temporary housing vouchers, travel vouchers, bus tokens, and referral information for shelters. The primary goal for the outreach has

been to identify individuals' needs and pair them with resources provided by the County or other organizations.

Due to COVID-19 safety protocols, the Homeless Outreach Team deployments have been revised to offer resources during regular service calls as needed, rather than on a regular schedule. Milpitas Police Officers will begin using the Mission Street Sobering Center for individuals (including unhoused individuals) that need drug treatment, alcohol treatment, and mental health resources.

In the last fiscal year, Council provided direction to enhance outreach services through a nonprofit agency. Staff has conducted research on various outreach service options, recognizing that outreach conducted by police officers and public safety staff may not be sufficient. Staff has evaluated several options with implementation recommendations under a separate memorandum to the City Council Housing Subcommittee. More information can be found in the Next Steps section of this memorandum.

- Education and Workshops for Community:
  The City of Milpitas created a webpage dedicated to educating our residents about resources for housing services, rent and utility assistance, meals, medical programs, job training, legal assistance, and low-cost transportation services. In recent months, this webpage has been updated with COVID-19 related resources including information about rent and mortgage relief, new eviction limitations, unemployment and other benefits.

  The City continues to partner with Project Sentinel, Rebuilding Together Silicon Valley, Catholic Charities, and Silicon Valley at Home with in-person and virtual workshops to inform residents of our multiple housing initiatives. In addition, Building Safety and Housing staff has conducted workshops during Affordable Housing and Building Safety Month in 2019 and 2020, promoting housing resources available to our residents. Since 2019, staff has conducted over two dozen outreach events and workshops on fair housing, tenant support resources, and various housing-related programs in partnership with local nonprofit agencies.

Production:

- 355 Sango Court:
  The 355 Sango Court development will offer 101 affordable units with the following breakdown: 40 project-based subsidy units that will provide permanent supportive housing for chronically homeless individuals with incomes at or below 30% of Area Median Income (AMI), 31 units that will provide permanent housing to extremely-low income households at or below 30% AMI, and 30 units that will provide permanent housing to low income households at or below 60% AMI. The City has committed $150,000 through a pre-development loan, $299,097 through a CDBG loan to assist with site acquisition, and a $6.5M loan from the Housing Authority Fund to assist the developer to secure construction financing. Construction is anticipated to begin in late 2020 and tenant placement is estimated to occur in mid-2022.

- Inclusionary Housing Ordinance No. 297:
  On June 19, 2018, the City Council adopted an ordinance that requires developers to set aside 15% of the project's housing units as affordable housing for very-low, low- or moderate-income households depending on the tenure of the project. This applies to developments with 10 or more housing units. Alternative compliance measures are available but require Council approval. Upcoming at various stages are market rate housing developments that will yield more than 100

affordable units as a result of this ordinance.

The ordinance also requires some types of commercial projects to pay impact fees, also known as commercial linkage fees, to help build or preserve affordable housing.

- Inclusionary Housing Fee Resolution No. 8852:
  On March 5, 2019, the City Council adopted Resolution No. 8852, which approved the affordable housing fee schedule for a residential in-lieu fee and a non-residential impact fee.

  As noted above, Ordinance No. 297 requires projects to construct 15% of total units as affordable. An in-lieu fee exception is provided for in the ordinance, but is evaluated on a case-by-case basis and requires City Council approval, prior to which affirmative findings must be made showing how the exception would exceed affordable requirements, and how the project would be better served with the exception or how the community benefits would exceed the project benefits.

  For the non-residential impact fees, the table below summarizes the past, present, and upcoming fee levels:

Building Permit Application Date	Commercial (Office, Retail and Hotel) (Fee/Sq Ft)	Industrial (R&D, Manufacturing and Warehouse) (Fee/Sq Ft)
July 1, 2019 – June 30, 2020	$4.00	$1.00
July 1, 2020 – June 30, 2021	$6.00	$3.00
July 1, 2021 – June 30, 2022	$8.00	$4.00
Each Subsequent Fiscal Year	Adjusted by Rate Index per Affordable Housing Ordinance	

Preservation:

- Sunnyhills Affordability Covenant:
  In October 2017, the City Council authorized funding for a HUD affordability covenant for the tenant based rental assistance residents who reside at the Sunnyhills Apartments. The covenant extended the current HUD contract an additional five years at $250,000 per year, protecting 149 households from displacement through February 28, 2023.

  In June 2020, the City Council allocated $200,000 in CDBG funding to Rebuilding Together Silicon Valley for a roof replacement capital project at the Sunnyhills Apartments. The project will provide new roof to help preserve and maintain the residential buildings that are almost exclusively occupied by low- and moderate-income residents.

- LifeMoves Homeless Shelter:
  To date, the City has allocated $185,400 in CDBG funding to two LifeMoves homeless shelters in need of critical repairs. These shelters offer temporary nightly homeless shelter support to Milpitas residents in immediate need of refuge.

Next Steps – Initiatives and Opportunities:

The City recognizes that ending homelessness requires significant efforts and regional collaboration and partnerships, especially given the urgent challenges brought on by the COVID-19 pandemic. Below is a brief description of next steps that build upon the City's efforts. These initiatives help identify remaining service gaps and ways to further prevent and reduce homelessness in Milpitas.

- Homelessness Outreach and Case Management:
  In FY 2019, the Milpitas City Council approved a $75,000 budget for a nonprofit agency homeless case manager dedicated to Milpitas. With limited staffing capacity at the time, staff explored with LifeMoves and identified the possibility to support residential services coordinators at a shelter but was unable to develop a feasible option for a dedicated Milpitas case manager as LifeMoves only provides services within its shelter facilities. Further research was delayed due to a prolonged staffing vacancy due to the labor market and the urgent priorities of rent relief, rent review, and COVID-19 pandemic response. With the full housing team currently on board in 2020 and in response to the City Council Housing Subcommittee, staff has returned to the research on homeless outreach and case management. City staff has evaluated several options with implementation recommendations under a separate memorandum to the City's Housing Subcommittee.

- Updated 2020-2025 Community Plan to End Homelessness:
  In 2014, Destination: Home, in partnership with the Santa Clara County Continuum of Care, developed a 5-year county-wide roadmap to end homelessness. The plan was intended to guide government officials, nonprofits, and other community members and sought to test innovative strategies, secure new funding, and adopt a more client-centered approach. The County recently revamped the plan, with City staff contributing in January and February 2020 in meeting with the County and Destination: Home to provide input into the plan and note Milpitas' contributions to ending homelessness. The City's approach thus far, as well as the planned next steps, are aligned with the three strategies under the updated plan: Address the root causes of homelessness through system and policy change; expand homelessness prevention and housing programs to meet the need; and improve quality of life for unsheltered individuals and create healthy neighborhoods for all. The updated plan was endorsed by the County Board of Supervisors and the City of San José on August 25, 2020. The new plan will be presented for endorsement at an upcoming Milpitas City Council meeting in October 2020. An executive summary is included here as Attachment A.

- Santa Clara County Unhoused Task Force:
  To implement the updated Community Plan to End Homelessness, Santa Clara County has convened a broad group of 30 stakeholders to identify and contribute ideas for feasible short-term strategies to address homelessness. The focus of this task force will be on immediate strategies to conduct outreach, build more interim housing, and to improve the quality of life for unhoused individuals while longer-term housing is developed. Vice Mayor Bob Nuñez and Councilmember Karina Dominguez have been appointed to serve on this task force, which is expected to further solidify the City's collaborative partnership with local and regional commitments towards identifying a package of emergency assistance for the unhoused that can be implemented as soon as possible. The first task force meeting took place on September 9, 2020. The second through fourth meetings will discuss plans and potential projects by region/cities (the second meeting on September 24 will focus on the North County, including Milpitas). The final meeting is scheduled for October 8 and will conclude with the approval of the task force recommendations.

- Project Homekey:
  The State of California created Project Homekey to protect individuals and families experiencing homelessness or who are at risk of experiencing homelessness and are impacted by the COVID-19 pandemic. The program offers $600M in urgent grant funding to purchase hotels, motels, or vacant apartment buildings, and to convert them into interim or permanent housing. The Extended Stay America hotel located at 1000 Hillview Court in Milpitas is identified as a priority candidate because it is a newer existing building that requires minimal construction and all existing rooms have kitchenettes. The project is proposed to convert a 146-room hotel into a 132-unit permanent supportive housing facility. The County and affordable housing developer Jamboree Housing have applied for the Project Homekey grant. City staff has been working proactively and collaboratively with the County, Jamboree Housing, and Destination: Home throughout the process in support of the proposed project. It is likely that the Milpitas project will receive Homekey grant funding, although competition in the Bay Area has been high. If the funding moves forward, staff will coordinate with Jamboree Housing, Destination: Home, and the County to conduct outreach and education with the Milpitas community. For more information, please refer to the August 25, 2020 information memorandum which is also included here as Attachment B.

Attachments:
Attachment A: Santa Clara County 2020-2025 Community Plan to End Homelessness Executive Summary
Attachment B: Memorandum on Project Homekey – Convert Extended Stay America Hotel into Permanent Supportive Housing

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Receive and Accept General Fund Monthly Financial Status Verbal Report**
Category:	Leadership and Support Services
Meeting Date:	10/6/2020
Staff Contact:	**Walter C. Rossmann, Deputy City Manager, 408-586-3111**
Recommendation:	Accept the September 2020 General Fund Monthly Financial Status verbal report.

Background:
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, the President of the United States declared a National Emergency concerning the Novel Coronavirus Disease (COVID-19) Outbreak. On Monday, March 16, 2020, the County of Santa Clara, and six of the most populous counties in the region, announced a shelter-in-place (SIP) order in light of the increased number of cases of COVID-19 that have been confirmed in Santa Clara County.

Since the onset of the pandemic economic activity has been suppressed, which has significantly impacted General Fund revenues. For example, in comparison to actual revenues received in FY 2018-19, the FY 2019-20 actual unaudited revenues decreased by $8.4 million, or 7.80%, from $108.1 million to $99.7 million.

On September 1, 2020, staff updated the FY 2021-2030 Ten-Year General Fund Financial Forecast (Forecast). The updated Forecast based on actual revenues received for the quarter ending June 30, 2020, which covers the four months the SIP order from mid-March, projects a structural deficit of $9 million. Based on the updated projections, General Fund revenues are projected to decline by $7 million, or 7.00% from $99.7 million to $92.7 million. The cumulative decline in actual and projected revenues from FY 2018-19 to FY 2020-21 are expected to be $15 million or nearly 15%.

In comparison to the projected loss of revenue of nearly 15%, the two-year period of revenue decline related to the Great Recession (from FY 2007-08 to FY 2009-10) was approximately $5 million, or 8.5%, from $59.3 million to $54.3 million. The projected revenue impact due to COVID-19 is far more severe.

Due to the projected General Fund structural deficit, on September 1, 2020, the City Council adopted a resolution directing the City Manager to implement the COVID-19 Fiscal Response Strategies and Guidelines which includes providing monthly updates on the financial status of the City's General Fund.

Analysis:
Staff will provide a verbal update on revenues only due to timing of actual revenues received and expenditures booked. For instance, for Transient Occupancy Tax staff will report on revenue received for the month of July and August and compare it to projections per the Forecast. Hotel operators are required to remit tax receipts within one month after collection. Typically, within two or three business days after this deadline all remittances are received.

After the end of a month, it takes typically a week to finalize allocating costs to the month which just ended. For instance, payroll costs for the last week in September will be processed during the week of October 5. Therefore, staff will not be able to report on expenditures incurred for the month ending on September 30.

On November 17, staff will provide the FY 2020-21 First Quarter Financial Status Report with a focus on the General Fund and the Utility Operating Funds.

Fiscal Impact:
Not applicable

California Environmental Quality Act:
Not applicable

Recommendation:
Accept the September 2020 General Fund Monthly Financial Status verbal report.

Attachment:
None

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Adopt a Resolution Establishing the Measure F Oversight Committee Subject to Voter Approval of Measure F**
Category:	Leadership and Support Services
Meeting Date:	10/6/2020
Staff Contact:	**Walter C. Rossmann, 408-586-3111**
Recommendation:	Adopt a resolution establishing the Measure F Oversight Committee and approve the Measure F Oversight Committee structure and responsibilities, subject to voter approval of Measure F (1/4 cent sales tax) on November 3, 2020.

Background:
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, the President of the United States declared a National Emergency concerning the Novel Coronavirus Disease (COVID-19) Outbreak. On Monday, March 16, 2020, the County of Santa Clara, and six of the most populous counties in the region, announced a shelter-in-place (SIP) order in light of the increased number of cases of COVID-19 that have been confirmed in Santa Clara County.

In response to the economic impact related to the pandemic, on March 27, the President signed into law the Coronavirus Aid, Relief and Economic Security (CARES) ACT, providing $2.2 trillion dollars of relief funds for businesses, government agencies, nonprofit organizations, and individual Americans. Additionally, the Federal Reserve implemented several monetary strategies to provide support for the flow of credit to American families and businesses.

On June 2, 2020, the City Council approved the FY 2020-21 Budget and Financial Plan solving a projected $25 million shortfall over three fiscal years with ongoing expenditure reductions and the use of reserves. The FY 2020-21 Budget and Financial Plan assumed an economic recovery within 18 months based on data available at that time and the unprecedented federal fiscal and monetary economic stimuli injected into the economy.

Since the approval of the FY 2020-21 Budget and Financial Plan, the projected economic impact related to COVID-19 has worsened with an additional significant impact to the City's FY 2020-21 General Fund revenues. Therefore, on August 4, 2020, the City Council placed Measure F, a ¼ cent sales tax measure, on the November 3, 2020 ballot for voter consideration in order to provide funding to maintain important City services with a sunset of the tax in eight years and requiring independent audits and a citizens' oversight committee.

On September 1, 2020, the City Council adopted a resolution directing the City Manager to implement the COVID-19 Fiscal Response Strategies and Guidelines which includes seeking Council approval of a citizens' oversight committee for Measure F in advance of the election. If Measure F is approved, establishing the structure and responsibilities of the oversight committee will help ensure that the City properly manages the funds.

Analysis:
In order to determine a possible structure and responsibilities for the Measure F Citizens' Oversight Committee, staff reviewed the structure of other City of Milpitas advisory commissions and reviewed the responsibilities of advisory bodies for general sales tax measures in California. The structure of oversight

committees varies among local agencies. Staff reviewed the oversight committees for general Sales Tax measures of the Cities of Larkspur, Lodi, Roseville, Santa Ana, Santa Barbara and Ventura and the Town of Los Gatos.

City of Milpitas Advisory Commissions Overview

The City of Milpitas currently has 12 advisory commissions advising the Council on specific issues such as the Arts Commission, the Public Safety and Emergency Preparedness Commission or the Youth Advisory Commission. On April 16, 2019, the City Council approved the Standardized City of Milpitas Commission By-Laws (Attachment 1). The by-laws determine the number of commissioners (seven plus two alternates) for each commission; provide that commissioners are appointed by the Mayor and approved by the City Council; set commissioners' term (maximum three terms of three years); and establish general requirements for advisory commissions such as the election of officers, structure and scheduling of meetings, and determination of a quorum.

Typically, commissioners are residents of the City and not necessarily citizens. Therefore, staff recommends the title for the tax measure oversight body to be "Measure F Oversight Committee" versus "Measure F Citizens' Oversight Committee." Although, City advisory bodies are referred to as commissions, to ensure consistency with Measure F, staff recommends the title of "Measure F Oversight Committee" versus "Measure F Oversight Commission."

In addition to the Standardized City of Milpitas Commission By-Laws, the City Council also adopted addenda to the by-laws specific to each commission which specifies the commission's advisory area, membership, and meeting frequency.

Measure F Oversight Committee Recommended Structure and Responsibilities

Consistent with the City Council approved Standardized City of Milpitas Commission By-Laws, staff recommends the formation of a seven-member advisory body with two alternate members appointed by the Mayor with appointments approved by the Council, up to a maximum of three three-year terms. The Finance Department would be responsible for staffing the Committee with oversight from the City Manager's Office. It is important to note that the Committee will only be established if the voters approve Measure F.

As outlined in the attached addendum to the standardized by-laws specific to the Measure F Oversight Committee, staff recommends that the Committee advise the Council on the following items:

- Annually, as part of the development of the budget, review the projected revenues and recommended expenditures for the funds generated by Measure F
- Annually, after the end of the Fiscal Year review status of programs and services, funded wholly or partially with proceeds from Measure F
- Receive annual presentations from the City' s sales and use tax consultant and the City's independent financial auditor.

Of the cities surveyed, some oversight bodies were tasked with additional responsibilities. Two local agencies required that the respective committees prepare an independent report to the Council regarding the revenue and expenditure of funds and another committee appears to be tasked with making budget recommendations. Staff does not recommend requiring the Measure F Oversight Committee to prepare an independent report because this would be burdensome for a volunteer committee. Further, staff does not recommend for the Measure F Oversight Committee to make budget recommendations because per Municipal Code Section VI-1-2.05 titled "Preparation and Administration of the Budget," the City Manager shall prepare the budget annually and submit it to the City Council.

Further, as detailed in the addendum to the standardized by-laws specific to the Measure F Oversight Committee, staff recommends quarterly meetings and that members of the advisory commission should have the following areas of expertise and/or are advocates for:

- Business and/or residential community
- Municipal or governmental services operations
- Municipal finance, taxation, budgeting, and/or accounting

Next Steps
If the voters approve Measure F, the City Council is scheduled to certify the election results on December 15, 2020 with the tax scheduled to go into effect on April 1, 2021. After certification of the election results, the City will begin the process for seating the Committee to ensure that the Committee will be able to review the projected revenues and recommended expenditures for the funds generated by Measure F as part of the FY 2021-22 budget process.

Policy Alternatives:

Alternative 1: Approve a different structure for the Measure F Oversight Committee

Pros: None identified.
Cons: This would be contrary to previous Council direction.
Reason not recommended: The City Council adopted a standard structure for its 11 commissions on April 16, 2019.

Alternative 2: Approve a different set of responsibilities for the Measure F Oversight Committee

Pros: None identified.
Cons: Potentially adding other responsibilities may divert existing staff resources from other high priority projects.
Reason not recommended: The recommended responsibilities are consistent with the intent of Measure F and consistent with other jurisdictions based on staff research.

Fiscal Impact:
If the voters approve Measure F, based on the current FY 2020-21 Sales Tax revenue estimate, a ¼ cent sales tax measure is expected to generate between $6 to $6.5 million in additional revenue per year, which would significantly reduce the projected structural General Fund deficit of $9 million.

California Environmental Quality Act:
Not applicable.

Recommendation:
Adopt a resolution establishing the Measure F Oversight Committee and approve the Measure F Oversight Committee structure and responsibilities subject to voter approval of Measure F (1/4 cent sales tax) on November 3, 2020.

Attachments:
Resolution
Standardized City of Milpitas Commission By-Laws
By-Law Addendum Measure F Oversight Committee

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS ESTABLISHING THE MEASURE F OVERSIGHT COMMITTEE SUBJECT TO VOTER APPROVAL OF MEASURE F AND APPROVING THE STRUCTURE AND RESPONSIBILITIES OF THE MEASURE F OVERSIGHT COMMITTEE

WHEREAS, on March 13, 2020, the President of the United States declared a National Emergency concerning the Novel Coronavirus Disease (COVID-19) outbreak; and

WHEREAS, on Monday, March 16, 2020, the County of Santa Clara, and six of the most populous counties in the region, announced a shelter-in-place order in light of the increased number of cases of COVID-19 that have been confirmed in Santa Clara County; and

WHEREAS, the FY 2020-21 Budget and Financial Plan assumed an economic recovery within 18 months based on data available at that time and the unprecedented federal fiscal and monetary economic stimuli injected into the economy; and

WHEREAS, on June 2, 2020, the City Council approved the FY 2020-21 Budget and Financial Plan with the adoption of Resolution No. 8976, solving a projected $25 million shortfall over three fiscal years with ongoing expenditure reductions and the use of reserves; and

WHEREAS, the General Fund pays for important City services, such as police response, fire and paramedic services, street operations and maintenance, library services, parks and recreation services and general municipal services to the public; and

WHEREAS, since the approval of the FY 2020-21 Budget and Financial Plan, the projected economic impact related to COVID-19 has worsened with local businesses still closed and hotel rooms remaining vacant; and

WHEREAS, this extended downturn has had an additional significant impact to the City's FY 2020-21 General Fund revenues, as estimated; and

WHEREAS, on August 4, 2020, the City Council placed Measure F, a ¼ cent Sales Tax Measure with a sunset of the tax in eight years, on the November 3, 2020 ballot for voter consideration in order to provide funding to maintain important City services, with a sunset of the tax in eight years requiring independent audits and a citizens' oversight committee; and

WHEREAS, on September 1, 2020 the City Council directed the City Manager to implement the COVID-19 Fiscal Response Strategies and Guidelines which includes seeking Council approval of the Measure F Oversight Committee in advance of the election for the Measure; and

WHEREAS, on April 16, 2019, the City Council approved the Standardized City of Milpitas Commission By-Laws, which guides the formation of advisory commissions.

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 Measure F Oversight Committee consistent with the Standardized City of Milpitas Commission By-Laws is hereby established subject to approval of Measure F by the voters of the City of Milpitas on November 3, 2020.

3. The Addendum to the Standardized City of Milpitas Commission By-Laws specific to Measure F Oversight Committee (Exhibit A) outlining the purpose and responsibilities of the Measure F Oversight Committee is approved subject to approval of Measure F by the voters of the City of Milpitas on November 3, 2020.

4. The approval of this resolution does not commit the City to any action that would have the potential for causing a significant effect on the environment as this resolution will implement financial reduction strategies with no clear commitment to any future project or elimination of any projects. As a result, there is no potential impact on the environment from this action per the California Environmental Quality Act ("CEQA") Guidelines Section 15061(b)(3). Further, this action is also exempt under CEQA Guidelines Section 15378(b)(4) as other governmental fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.

PASSED AND ADOPTED this _____ day of _____ 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Rich Tran, Mayor

APPROVED AS TO FORM:

_____
Christopher J. Diaz, City Attorney

CITY OF MILPITAS
COMMISSION BYLAWS
Addendum: Measure F Oversight Committee

The Measure F Oversight Committee was established by the Milpitas City Council on October 6, 2020 subject to voter approval on November 3, 2020 of Measure F, a ¼ cent Sales Tax Measure with a sunset of the tax in eight years.

Advisory Area

This Commission will advise Council:

- Annually, as part of the development of the budget, review the projected revenues and recommended expenditures for the funds generated by Measure F
- Annually, after the end of the Fiscal Year review status of programs and services, funded wholly or partially with proceeds from Measure F
- Receive annual presentations from the City' s sales and use tax consultant and the City's independent financial auditor.

Membership

While not required, it is preferred that Members of the Measure F Oversight Committee possess the following areas of expertise and/or are advocates for:

- Business and/or residential community
- Municipal or governmental services operations
- Municipal finance, taxation, budgeting, and/or accounting

Meetings

The Measure F Oversight Committee shall hold quarterly meetings the 3rd Wednesdays of March, June, September, and December at 7:00 PM at the Committee Conference Room in City Hall, or at another designated location.

CITY OF MILPITAS
COMMISSION BY-LAWS

Section 1. Purpose

A Commission serves as an active advisory group to the City Council on a variety of topics as directed by the City Council. These Commission By-Laws are applicable to all Commissions except for the Planning Commission, which is governed by the Municipal Code, Chapter 500. In addition to these By-Laws, each Commission shall have an addendum that is specific to the Commission and includes information about the Commission scope, member eligibility, and meeting frequency.

Section 2. Membership

A Commission is composed of seven (7) members and two (2) alternates appointed by the Mayor and approved by the City Council. All members and alternates shall be Milpitas residents, 18 years or older, unless otherwise noted in the Commission Bylaws Addendum. The City Council may appoint a Council liaison to serve on the Commission in a non-voting capacity.

Section 3. Term of Office & Removal

The term of office is three years, or until the seat is filled, for every Commission and is tied to specific seats, not actual Commission members or alternates. A Commission member or alternate is appointed for the term of the seat, which can be less than three years, based on the time of appointment. A Commission member can re-apply at the end of each term and is eligible to re-apply for a total of three full terms on any one Commission. No member shall serve more than three (3) consecutive terms on one Commission but is eligible to apply for other Commissions.

Members and alternates are expected to attend all meetings. When any member or alternate has three or more absences in a 12-month period, the City Clerk's Office shall forward this information to the City Council for review and possible removal of the member or alternate from the Commission. Any member or alternate of the Commission may be removed from office at any time by a simple majority vote of the City Council at a regularly scheduled Council meeting, with or without cause.

Members and alternates may apply for reappointment by submitting a letter or e-mail of interest to the Mayor with a copy to the City Clerk prior to the expiration of his/her term of office. Any member or alternate of the Commission who wishes to resign MUST submit a letter of resignation or email to the Mayor with a copy to the City Clerk. Resignations will be confirmed by the City Council at a regularly scheduled Council meeting.

Section 4. Vacancies

Vacancies will be filled for the unexpired portion of the term by the Mayor with the approval of the City Council.

Section 5. Officers

A Chair and Vice Chair will be selected annually at the first meeting of the calendar year from the appointed members for a term of one year. The Chair will call for meetings and preside over all sessions. In the absence of the Chair and Vice Chair, the member with longest continuous service on the Commission will preside.

Section 6. Meetings

Commissions shall hold regular meetings at a predetermined day, week, time and location. All meetings shall be open to the public. Should a scheduled meeting occur on a holiday, said meeting will be deferred to the same day of the following week or to a date agreed upon by a majority of the Commission. Special meetings may be called by majority vote, the Chair, Staff Liaison, or the City Council. No meetings will be held in the month of July. Notice of any special meeting shall be given as required by law. Except as otherwise provided by these Bylaws, the Commission shall follow the latest edition of Robert's Rules of Order for the orderly conduct of meetings.

Section 7. Quorum

Any FOUR (4) members, including alternates, shall constitute a quorum for the transaction of business.

Section 8. Voting and Seating of Alternates

Voting authority is extended to the SEVEN (7) regular members. An alternate member shall vote only if seated in the absence of a regular member. In the event that a regular member is absent, alternate members shall be seated in order of their alternate position. If a member arrives after an alternate has been seated, the alternate shall remain as the voting member until the end of the meeting.

Section 9. Duties of Commission to be Advisory Only

It is intended that the Commission shall be an advisory body to the City Council.

Section 10. Subcommittees

Other committees within the Commission will be subcommittees of the Commission. The Commission may appoint such subcommittees, with at least one Commission member on the subcommittee, but not more than three members so as not to constitute a quorum.

Section 11. Assistance of Staff

The City Manager of the City of Milpitas shall provide the Commission with such information and staff assistance as the Commission may from time to time request subject to the limitations imposed by the City Council. The staff member designated by the City Manager shall attend meetings of the Commission, meetings of the Commission subcommittee as necessary, and submit such reports as said Commission may request and as deemed necessary or desirable, subject to limitations imposed by the City Council. The role of the Staff Liaison on a Commission is defined and should be referred to in the City of Milpitas Commissioner Handbook.

Section 12. Amendments

These Bylaws are subject to change through amendments approved by the City Council.

PASSED AND ADOPTED APRIL 16, 2019.

Addendums:

1) Arts Commission
2) Community Advisory Commission
3) Economic Development and Trade Commission
4) Energy and Environmental Sustainability Commission
5) Library and Education Advisory Commission
6) Parks, Recreation and Cultural Resources Commission
7) Public Safety and Emergency Preparedness Commission
8) Senior Advisory Commission
9) Science, Technology, and Innovation Commission
10) Veterans Commission
11) Youth Advisory Commission

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Introduce Ordinance No. 23.15 for Updates to Milpitas Municipal Code on Purchasing**
Category:	Leadership and Support Services
Meeting Date:	10/6/2020
Staff Contact:	Walter C. Rossmann, Deputy City Manager, 408-586-3111
Recommendations:	1. Receive presentation from staff. 2. Following the City Attorney reading the title, move to waive the first reading beyond the title of Ordinance No. 23.15. 3. Introduce Ordinance No. 23.15 to update the municipal code section on purchasing.

Background:
The City's Purchasing Division (Division), housed in the Finance Department, is responsible for the centralized purchasing of goods and services governed by City's Purchasing Ordinance (Ordinance) except for capital improvement related contracting which is handled by the Engineering Department as well as small dollar purchases which are delegated to City Departments consistent with the Municipal Code.

The Division is headed by the Purchasing Agent, who is responsible for implementing the Ordinance, and supported by 1.0 Buyer and 0.5 Temporary Buyer. Annually, the Purchasing Division develops and processes over 200 contracts in support of City operations consistent with the Ordinance.

In FY 2019-20, the City substantially completed the implementation of ProcureNow, its e-procurement and contract management system and underwent a procurement study involving stakeholders across all departments. The study identified 39 recommendations. During the last six months, staff completed 11 recommendations and has been working on addressing the remaining recommendations.

The County of Santa Clara Shelter-in-Place order in response to the COVID-19 Pandemic accelerated the implementation of identified recommendations and forced streamlining operations through online approval of contracts using DocuSign, implementation of the contract management database for Purchasing originated contracts including automatic notification for renewal of contracts and insurance, and online payment for Procurement Card (P-Card) purchases. Further streamlining while ensuring fair and open competition and competitive pricing is dependent on updating the Ordinance.

On September 1, 2020, the City Council approved the COVID-19 Fiscal Response Strategies and Guidelines to be implemented by the City Manager. These fiscal strategies and guidelines were designed to ensure an effective response to the economic crisis and related impact on the City's finances caused by COVID-19, while minimizing service cuts to our community. One of these fiscal strategies and guidelines directs the City Manager to identify and bring forward for the Council's consideration City policy and ordinance changes, as applicable, that would enable/facilitate service delivery improvements.

Analysis:
The recommended changes to the Ordinance are based on a thorough review by the City Attorney, staff, and the consultant who studied the City's procurement function. The primary recommended changes include updates to Procurement Methods and Procedures, increased bidding thresholds and related contract

amendment authority, annual reporting requirements and deadlines for sole source purchases and standardization of equipment, changes of definitions, and alignment to existing practices.

Procurement Methods and Procedures

This section of the Ordinance was primarily restructured for better understanding and transparency. For example, a new paragraph providing an overview of the section was added which outlines the various procurement methods and bidding thresholds, the public agency procurement paragraph was simplified, common procurement procedures of various solicitation methods were made consistent, and the requirements for bonds and insurance was expanded. Additionally, staff recommends adding the Request for Qualifications solicitation method, an “or equals” process, and criteria for standardization of supplies, material or equipment.

The current ordinance defines the Request for Quotes, the Invitation for Bids, and the Request for Proposals solicitation methods. Staff recommends adding the Request for Qualifications (RFQ) solicitation method which may be used only for competitively selecting professional services under one or more of the following considerations:

1. For establishing a pool of qualified bidders;
2. The ability of the firms to provide the service promptly, or within the time specified, without delay or interference;
3. The character, integrity, reputation, judgment, experience, and efficiency of the firm;
4. The quality of performance of previous services;
5. Quality, availability, or capability is overriding in relation to price in procurement of research, development, technical services;
6. The sufficiency of the financial resources and ability of the firm to provide the service;
7. The need to evaluate whether the marketplace will respond better to a solicitation permitting a range of alternative proposals or evaluation and discussions of them before entering the contract;
8. The number and scope of conditions attached to the Solicitation.

With the RFQ method price is not a consideration initially. However, price will be determined through a competitive Best and Final Offer process and/or negotiations with finalists.

With the acquisition of supplies, material and equipment, staff may develop specifications. With the “or equals” process, staff may reference a product by its brand name in solicitation documents and add the words “or equals.” Any reference to a specific brand name followed by the term "or equal" in specifications is illustrative only and describes a product best meeting the specific operational, design, performance, maintenance, quality, and reliability requirements of the City. A bidder may offer an equivalent ("or equal") in response to a brand name or equal reference.

When an "or equal" is offered, the City may test and evaluate the product prior to award of the contract and the City determines if “an equal” offered meets the specification. At bidder's expense, bidder bears sole responsibility for providing any information, test data or document required by the City to fully evaluate the acceptability of the "or equal." at bidder's expense, this full evaluation may require independent testing, including destructive testing, at qualified test facilities. If the City rejects a response or part of a response containing any "or equal," the Purchasing Agent shall determine the decision in writing.

The current ordinance provides guidance for standardizing supplies, material or equipment including technology products and services. However, such guidance is not based on quantifying cost savings. Standardization shall be considered if the Purchasing Agent has determined that it is required for the health, safety or welfare of the people or employees of the City, or that repair or maintenance costs would be minimized; training of user and/or repair and maintenance personnel would be simplified; supplies or spare parts would be readily available; modifications to existing equipment would not be necessary; or matching existing supplies, materials or equipment is required for proper operation of a particular piece of equipment or City program. The City Council currently approves standardizations for supplies, material or equipment including technology products and services.

In contrast, the recommended changes to the standardization section of the Ordinance outlines more detailed criteria requiring staff to quantify cost savings for the Purchasing Agent's review and approval of standardizing on supplies, material, equipment or technology products and services with a focus on cost savings. These criteria are as follows:

1. In order to acquire a specific product(s) for the purpose of conducting a field test or experiment to determine the product's suitability for use by the City.
2. When it is required for proper operation or function to match other products with respect to the repair or expansion or completion of a system or program already in use by the City, including, but not limited to, technology purchases required to achieve interoperability with existing hardware, software, systems or programs.
3. In order to achieve significant cost savings based upon consideration of the following cost factors:
    a. Timeliness and quality of installation, repair and maintenance;
    b. Quality of user training;
    c. Supplies and replacement parts;
    d. Modification of existing equipment, materials or systems;
    e. Future upgrades and updates;
    f. Estimated amount and cost of reasonably foreseeable future purchases of equipment that would be required to be compatible or functional with the product which is the subject of the standardization determination.
    g. Administrative costs.

Based on the detailed criteria focusing on cost savings related to standardization, staff recommends that, consistent with sole source purchase approvals, the Purchasing Agent is authorized to review and approve standardizations and submit annually a report to the City Council listing all standardizations approved during the past fiscal year including the product, manufacturer, and reasons for the standardization as authorized in the Ordinance and detailed above.

<u>Bidding thresholds and related contract amendment authority</u>
Consistent with the Council approved COVID-19 Fiscal Response Strategies and Guidelines, staff recommends increasing the thresholds for informal to formal competition based on estimated pricing. As the table below shows, currently for purchases of $5,000 or less, the Ordinance requires for staff to obtain three quotations whenever possible; for purchases over $5,000 and less than $20,000, the Ordinance requires staff to get at least three quotations in writing; and for purchases above $20,000 to engage in a formal competitive process such as an Invitation for Bid or a Request for Proposals process.

Staff recommends increasing the solicitation method thresholds based on the estimated cost of purchase as outlined in the table below. For estimated purchases not to exceed $10,000, the updated Ordinance would require staff to obtain three quotations whenever possible. Increasing this threshold from $5,000 to $10,000 is consistent with similar sized cities in Santa Clara County. The cities of Mountain View and Palo Alto require that quotes be obtained for estimated purchases of $10,000 and higher. For the City of Santa Clara, the threshold is $15,000 and for the City of Cupertino the threshold is $60,000. Only the City of Sunnyvale requires quotes for estimated purchases of $5,000 or higher.

For an estimated cost of purchase of more than $10,000 and less than $50,000, the Ordinance would require staff to issue a Request for Quotes indicating the basis of award through the City's e-procurement system and vendors known to be able to provide the supplies and services and base the award of the contract, whenever possible, on at least three quotations. For an estimated cost of purchase of more than $50,000, the updated ordinance requires formal solicitation methods such as Invitation for Bid, Request for Proposals, etc. unless exempted by the Ordinance. This change increases the requirement for a formal solicitation method from $20,000 to $50,000 which is consistent with similar sized cities in our county. For the cities of Mountain View and Palo Alto the formal solicitation threshold starts with estimated purchases of more than $50,000. For the City of Santa Clara and Mountain View the threshold is $100,000 and for the City of Cupertino the threshold is $200,000.

Solicitation Method	Current Thresholds (Based on actual cost of purchase)	Recommended Thresholds (Based on estimated cost of purchase)
No mandatory competition	$5,000 or less	Not to exceed $10,000
Informal Solicitation Method - Request for Quotes (supplies and services)	Over $5,000 and less than $20,000	More than $10,000 and no more than $50,000
Formal Solicitation Method - Invitation for Bid (primarily for supplies, material and equipment) - Request for Proposal - (primarily for services) - Request for Qualifications (professional services only)	$20,000 or more	More than $50,000

The City Manager is authorized to award contracts up to a contract amount of $100,000 and any contract with a value greater than $100,000 requires Council approval. This Ordinance clarifies that the City Manager is authorized to award California Uniform Public Construction Cost Accounting Act (CUPCCA) up to a contract amount of $100,000.

Per the current Ordinance, the Purchasing Agent has certain contract amendment authority which is based on the previous City Manager contract approval authority of $50,000 and to extend a contract without increase in compensation for up to six months. As shown in the table below, the Purchasing Agent may amend a contract based on certain conditions and up to a certain amount for individual amendments and cumulative contract amendments.

Contract Amount	Individual Contract Amendment Authority	Cumulative Contract Amendment Authority
No more than $50,000	10% of Award or $5,000 whichever is less	15% of Award or $7,500 whichever is less
More than $50,000	10% of Award or $10,000 whichever is less	15% of Award or $20,000 whichever is less

Staff recommends aligning the contract amounts from $50,000 to $100,000 with the City Manager contract authority with similar conditions as shown in the table below. Additionally, staff recommends changing the Purchasing Agent's authority to extend a contract without increase in compensation from up to six months to up to 12 months. These changes in authority will streamline City operations.

Contract Amount	Individual Contract Amendment Authority	Cumulative Contract Amendment Authority
No more than $100,000	10% of Award or $10,000 whichever is less	15% of Award or $15,000 whichever is less
More than $100,000	10% of Award or $20,000 whichever is less	15% of Award or $40,000 whichever is less

<u>Annual reporting requirements and deadlines for sole source purchases and standardization of supplies, material or equipment</u>

Currently, Municipal Code section I-310-3.70 (c) (4) requires that not later than July 15th annually, each City department shall provide to the City Council a list of all sole source contracts entered into or renewed during the past fiscal year. In praxis, this reporting requirement has been assumed by the Purchasing Agent because the Purchasing Agent per the Ordinance (Section I-2-3.09, titled "Sole Source Procurement"), prior to award of a sole source contract, is required to determine in writing, after conducting a good faith review of available

sources, that only one viable source exists for the required supplies, material, equipment, or general service, or that there is a compelling reason for using only one source. Since the deadline for reporting all sole source purchases occurs during the annual Council recess, staff is required to submit the report twice. First, the report is provided as an Information Memorandum to the City Council by July 15 and then as a staff report after the recess on an August Council agenda so that the public can review the information as well.

With this ordinance change, staff recommends moving the reporting requirement from the current Chapter to the Ordinance, requiring the Purchasing Agent to submit the annual report, and extending the reporting deadline to August 31 to provide additional time to compile the data after the end of the fiscal year and avoid having to submit the report twice.

Additionally, with the annual sole source report, staff recommends adding the requirement to report on approved standardizations of supplies, material or equipment by August 31 for prior fiscal year actions.

Changes of definitions

Changes of definitions include clarifying additions such as including Purchase Orders (POs) in the definition of contracts. A PO has potentially two functions. It serves as a payment vehicle and as a contract. Unlike an agreement, a PO does not have to be signed by a vendor. Therefore, purchases of goods, supplies, and equipment, governmental agencies can be expedited by attaching standard terms and conditions to a PO.

The definition for professional services is recommended to be expanded to include information technology services such as installation and implementation of information technology projects, software licensing and maintenance, and Software as a Service (SaaS). Currently, contracts for information technology are not addressed in the ordinance. With this change, the exception for not issuing Purchase Orders related to technology services is recommended to be removed.

The definition of Purchasing Agent is clarified to include the Purchasing Agent, the Director of Finance or his or her designee, or such position designated by the City Manager to administer this Chapter. This change provides clarity in the absence of the Purchasing Agent.

The definition of Signature is aligned with electronic signatures as established by law and current practice of accepting scanned signatures.

The overarching term of Solicitation is introduced which includes an invitation for bids or request for proposals, qualifications, quotes, or other document including all documents, whether attached or incorporated by reference, utilized in furtherance of a City procurement of goods or services.

Alignment to existing practices

In addition to aligning the sole source reporting requirement, staff recommends authorizing the disposition of firearms in the Municipal Code consistent with the current Memorandum of Understanding (MOU) with the Milpitas Police Officer Association. Per MOU, a sworn officer who has served satisfactorily in the Department for at least five years may purchase a service weapon based on its depreciated value upon satisfactory separation from City service. Further upon retirement, the City shall give an officer his/her service weapon and holsters without charge under certain conditions.

Other alignments to existing practices include adding contract management to the Department Heads' list of responsibilities.

Policy Alternative:

Alternative: Do not approve the Ordinance changes.

Pros: Staff will continue procuring goods and services within the existing framework of rules and regulations.

Cons: The Ordinance changes are modernizing the existing Ordinance consistent with best practices.

Reason not recommended: Our City would not streamline the City's purchasing system to reduce the administrative burden and cost while ensuring open and fair competition and competitive pricing.

Fiscal Impact:
With Council approval of the recommended Ordinance amendments, the citywide purchasing system will be streamlined freeing up staff time to work on other high priority projects.

California Environmental Quality Act:
Not applicable

Recommendations:
1. Receive presentation from staff.
2. Following the City Attorney reading the title, move to waive the first reading beyond the title of Ordinance No. 23.15.
3. Introduce Ordinance No. 23.15 to update the municipal code section on purchasing.

Attachment:
Draft Ordinance No. 23.15

PLEASE NOTE:

This copy of Ordinance No. 23.15 is a “redlined” version for your convenience. Text additions are designated by an underline and text deletions are designated with a strikethrough.

REGULAR

NUMBER: **23.15**

TITLE: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTERS 2 (PURCHASING) AND 310 (OPEN GOVERNMENT ORDINANCE) OF TITLE I (ADMINISTRATION) OF THE MILPITAS MUNICIPAL CODE RELATING TO PURCHASING**

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Rich Tran, Mayor

APPROVED AS TO FORM:

_____
Christopher J. Diaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the City's Purchasing Division in the Finance Department supports all City Departments to procure and contract for goods and services while ensuring fair and open competition consistent with the Municipal Code; and

WHEREAS, the City studied its procurement function including process mapping to streamline procurement processes and reducing administrative costs while ensuring competitive pricing; and

WHEREAS, on March 16, 2020, the County of Santa Clara ordered residents to shelter-in-place ("Shelter-In-Place Order") in response to the COVID-19 pandemic; and

WHEREAS, the Shelter-in-Place Order accelerated the streamlining of operations through online approval of contracts using DocuSign, implementation of the contract management database for contracts originating from the Purchasing Division including automatic notification for renewal of contracts and insurance, and online payment for Procurement Card (P-Card) purchases; and

WHEREAS, further streamlining while ensuring fair and open competition and competitive pricing is dependent on updating the Purchasing Ordinance; and

WHEREAS, on September 1, 2020, the City Council approved the COVID-19 Fiscal Response Strategies and Guidelines; and

WHEREAS, the City Manager was directed to follow these fiscal strategies and guidelines to ensure an effective response to the economic crisis and related impact on the City's finances caused by COVID-19, while minimizing service cuts to our community; and

WHEREAS, one of these fiscal strategies and guidelines directs the City Manager to identify and bring forward for Council consideration City policy and ordinance changes, as applicable, that would enable/facilitate service delivery improvements; and

WHEREAS, the primary recommended changes to the City's Purchasing Ordinance include updating procurement methods and procedures, increasing bidding thresholds and related contract amendment authority, establishing annual reporting requirements and deadlines for sole source purchases and standardization of equipment, changing definitions, and aligning the Purchasing Ordinance with existing practices.

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

SECTION 1. RECORD AND BASIS FOR ACTION

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

SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE I, CHAPTER 310

Title I (Administration), Chapter 310 (Open Government Ordinance), Section 3.70 (Public Information that Must be Disclosed) of the Milpitas Municipal Code is hereby amended to read as follows:

I-310-3.70 - Public Information that Must be Disclosed

Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

(a) Drafts and Memoranda. No preliminary draft or memorandum shall be exempt from disclosure under Government Code section 6254, subdivision (a) if it is normally kept on file. Preliminary drafts and memoranda concerning contracts, memoranda of understanding, or other matters subject to negotiation or pending Council approval shall not be subject to disclosure to this provision until final action has been taken.

(b) Litigation Material.

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this chapter:

(i) A pre-litigation claim against the City;

(ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;

(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any Milpitas governmental ethics code, or this C~~c~~hapter.

(2) Unless otherwise privileged under California law, when litigation is adjudicated or otherwise settled, records of all communications between the department and the adverse party shall be subject to disclosure, including the text and terms of any settlement.

(c) Contracts, Bids and Proposals.

(1) All initial City Requests for Proposals ("RFP's") shall be kept in a central repository and shall be made available for public inspection. In addition, RFP's shall be placed on the City's website for a period from the date the RFP was issued to the date that the RFP is due.

(2) Contracts, contractors' bids, responses to requests for proposals and all other records of communication between the department and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit. All bidders and contractors shall be advised that information provided which is covered by this subdivision will be made available to the public upon request. Immediately after any review or evaluation or rating of responses to an RFP has been completed, evaluation forms and score sheets and any other documents used by persons in the RFP evaluation or contractor selection process shall be available for public inspection. The names of scorers, graders or evaluators, along with their individual ratings, comments, and score sheets or comments on related documents, shall be made immediately available after the review or evaluation of an RFP has been completed.

(3) During the course of negotiations for:

(i) Personal, professional, or other contractual services not subject to a competitive process or where such a process has arrived at a stage where there is only one qualified or responsive bidder;

(ii) Leases or permits having total anticipated revenue or expense to the City;

(iii) Any franchise agreements, all documents exchanged and related to the position of the parties, including draft contracts, shall be made available for public inspection and copying upon request. In the event that no records are prepared or exchanged during negotiations in the above-mentioned categories, or the records exchanged do not provide a meaningful representation of the respective positions, the City Attorney or city representative familiar with the negotiations shall, upon a written request by a member of the public, prepare written summaries of the respective positions within five (5) working days following the final day of negotiation of any given week. The summaries will be available for public inspection and copying. Upon completion of negotiations, the executed contract, including the dollar amount of said contract, shall be made available for inspection and copying.

~~(4) Not later than July 15th annually, each City department shall provide to the City Council a list of all sole source contracts entered into or renewed during the past fiscal year. This list shall be made available for inspection and copying as provided for elsewhere in this Section.~~

(d) Budgets and Other Financial Information. Budgets, whether tentative, proposed or adopted, for the City or any of its departments, programs, projects or other categories, and all bills, claims, invoices, vouchers or other records of payment obligations as well as records of actual disbursements showing the amount paid, the payee and the purpose for which payment is made, other than payments for social or other services whose records are confidential by law, shall not be exempt from disclosure under any circumstances.

(e) Appraisals, offers and counteroffers relating to the City's purchase of real property are exempt until an agreement is executed. If an agreement for purchase is not submitted to the Council for approval then this exemption expires 1 year after negotiations are terminated.

(f) ~~Reserved.~~

~~(g)~~ Neither the City nor any officer, employee, or agent thereof may assert an exemption for withholding for any document or information based on a "deliberative process" exemption, either as provided by California Public Records Act Section 6255 or any other provision of law that does not prohibit disclosure.

~~(h) Reserved.~~

SECTION 3. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE I, CHAPTER 2

Title I (Administration), Chapter 2 (Purchasing) of the Milpitas Municipal Code is hereby amended to read as follows:

Chapter 2 - PURCHASING

Sections:

Section 1 - Purpose and Application: Definitions

I-2-1.01 - Purpose

The purpose of this Purchasing Ordinance is to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.

I-2-1.02 - Application

Except as otherwise provided herein, this C~~c~~hapter applies to contracts for the procurement of supplies and services~~,~~ entered into by the City. When the procurement involves the expenditure of federal assistance, contract, or grant funds, the procurement shall be conducted in accordance with mandatory applicable federal law and regulations. Nothing in this ~~c~~Chapter shall prevent the City and any ~~public~~City affiliated agency from complying with the terms and conditions of any grant, gift or bequest that is otherwise consistent with law.

I-2-1.03 - Definitions

The words defined in this section shall have the meanings set forth below whenever they appear in the Purchasing Ordinance, unless the context in which they are used clearly requires a different meaning; or, a different definition is prescribed for a particular section or provision.

1. BIDDER. Any person who submits a response to a competitive City solicitation~~ BRAND NAME OR EQUAL SPECIFICATION. A specification limited to one (1) or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet City requirements, and which provides for the submission of equivalent products~~.

~~2.~~ 2~~ BIDDER. Any person who submits a response to a competitive City solicitation.~~

~~3~~. BUSINESS. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

~~4~~3. CITY. The City of Milpitas~~.~~ and City affiliated agency.

~~5~~4. CONTRACT. All types of City contracts~~ or~~, agreements, or purchase orders with the exception of public works contracts~~ which shall be governed by I-2-3.20~~, for the procurement of supplies and services or the disposal of surplus supplies.

~~6~~5. CONTRACT MODIFICATION. Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract~~ accomplished by mutual action of the parties to the contract.~~ .

~~7~~6. CONTRACTOR. Any person having a contract with ~~a governmental body~~the City.

~~8~~7. DATA. Any recorded information, regardless of form or characteristic.

~~9~~8. ELECTRONIC. Any electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.

~~10~~9. ELIGIBLE LOCAL PROVIDER. Any local provider who is an otherwise responsible bidder and otherwise responsive to ~~the~~a City's ~~invitation for bids~~competitive solicitation.

~~11.~~ 10. ENVIRONMENTALLY PREFERABLE PRODUCTS OR MATERIALS. Any products or materials contained in the products that have a reduced negative effect on human health and the environment when compared with competing products that serve the same purpose. This comparison may consider raw materials' acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance or disposal of the product.

~~12~~11. GENERAL SERVICES. The furnishing of goods and services by a vendor that does not typically require a license, certification or other professional criteria to perform the work. This includes services such as equipment maintenance, janitorial, printing, landscaping and refuse disposal. ~~This term shall not include employment agreements or collective bargaining agreements.~~

~~13~~12. GRANT. Any furnishing of funds by an outside agency or other organization to support a program authorized by law.

~~14. INVITATION FOR BIDS. All documents, whether attached or incorporated by reference, utilized for soliciting bids.~~

~~15~~13. LOCAL PROVIDER. A supplier or provider of equipment, materials, supplies or services which has an established place of business within the City of Milpitas, which has a City of Milpitas business license, which has paid all currently due business license fees and taxes, and which began doing business within the City of Milpitas at least one (1) year prior to the City's inviting bids or quotations for the respective purchase.

~~16~~14. PERSON. Any business, individual, union, committee, club, other organization, or group of individuals.

~~17~~15. POST-CONSUMER MATERIAL OR PRODUCT. Any material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item, including any waste material and by-products which have been recovered or diverted from solid waste.

~~18~~16. PROCUREMENT. The buying, purchasing, renting, leasing, or otherwise acquiring of any supplies or services. It also includes all functions that pertain to the obtaining of any supply or service, including description of requirements, selection, and solicitation of sources, preparation and award of contract and contract administration.

~~19~~17. PROFESSIONAL SERVICES. ~~Those services~~Services, generally of an intangible nature that typically require a license, certification, and/or other professional criteria to perform the work as defined by the laws of the State of California including, but not limited to, Architect, Engineer, Land Surveyor, Attorney, Public Accountant~~.~~ as well as information technology services such as installation and implementation of information technology projects, software licensing and maintenance, and Software as a Service (SaaS).

~~20~~18. PROVIDER. The terms bidder, supplier, contractor, vendor or provider, may be used interchangeably and shall refer to the person, company, or corporation from whom the City of Milpitas purchases supplies or services or with whom the City enters into a contract.

~~21~~19. PUBLIC AGENCY. A public agency is defined as any school district, ~~city~~City, state, federal agency, U.S. Communities program or other nonprofit association or group consisting of governmental entities.

~~22~~20. PUBLIC NOTICE. The distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods shall often include, but are not limited to, publication in newspapers of general circulation, posting in public places, electronic or paper notices to prospective bidders, and posting on web pages designated by the City for that purpose.

~~23~~21. PUBLIC WORKS CONTRACT. Any City contract for the performance of a "public project" as defined in Public Contract Code ~~Section~~section 22002, as it may be amended from time to time.

~~24. RECYCLED PRODUCT PREFERENCE. A price preference, equal to ten percent (10%) of the lowest cost bid, given to bidders offering recycled products over those offering nonrecycled products.~~

~~25.~~ 22. PURCHASING AGENT. The Purchasing Agent, the Director of Finance or his or her designee, or such position designated by the City Manager to administer this Chapter.

23. REQUESTING DEPARTMENT. Any organizational unit of the City of Milpitas that utilizes any supplies or services procured under this Ordinance.

24. ~~26~~RESPONSE. means a bid, proposal, quote, statement of qualification or other communication offered in response to a competitive City solicitation.

25. RESPONSIBLE BIDDER. A bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the work.

~~27~~26. RESPONSIVE BIDDER. A bidder who has complied with the instructions and requirements established by the City and set forth in the ~~contract, purchase order or request for quotations~~City's solicitation documents.

~~28~~27. SIGNATURE. Shall be defined as a manual signature affixed in ink~~.~~ or provided through other acceptable means established by law. A faxed or scanned signature is acceptable ~~so long as it is followed up within ten (10) calendar days by the original document~~.

~~29~~28. SPECIFICATION. Any description of the physical or functional characteristics or of the nature of a supply or service. It may include a description of any requirement for inspecting, testing, or preparing a supply or service for delivery.

~~30~~29. SOLICITATION. An invitation for bids or request for proposals, qualifications, quotes, or other document including all documents, whether attached or incorporated by reference, utilized in furtherance of a City procurement of goods or services.

30. SUPPLIES. All property (including, but not limited to, equipment, goods and materials) except as otherwise provided herein.

31. SURPLUS SUPPLIES. Supplies which are worn out, obsolete or unsuitable for City use.

32. WRITING OR IN WRITING. The product of any method of forming characters on paper, or other materials, or viewable screens, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.

Section 2 - Division of Purchasing

I-2-2.01 - Establishment

There is hereby established for the City a Division of Purchasing, headed by a Purchasing Agent, who shall report to the Director of the ~~Financial Services~~Finance Department.

I-2-2.02 - Responsibilities

In accordance with this C~~c~~hapter, the Purchasing Agent shall:

1. Procure or supervise the procurement of all supplies and services needed by the City, except as otherwise provided herein;
2. ~~Exercise direct supervision over the City central stores and general supervision over all other inventories of supplies belonging to the City;~~ Award contracts for Fifty Thousand Dollars ($50,000) or less;
3. Amend contracts or purchase orders awarded for amounts of Fifty Thousand Dollars ($50,000) or less as necessary, as long as the total amount of the amended contract does not exceed Fifty Thousand Dollars ($50,000).
4. Sell, trade or otherwise dispose of surplus supplies belonging to the City;

~~4~~5. Establish and maintain programs for specification development, contract administration and inspection and acceptance, in cooperation with the departments using the supplies and services;

~~5~~6. Provide ongoing training and support to the City departments pertaining to procurement of supplies or services ~~under Five Thousand Dollars ($5,000);~~;

~~6. Execute and administer~~7. Administer contracts with vendors for the purchase of citywide services and supplies such as paper, office supplies, janitorial services and office equipment;

~~7~~8. Establish and maintain a central vendor database categorized by goods and services;

~~8~~9. Provide management of the Procurement Card and Single Merchant Credit Card Programs;

~~9~~10. Adopt operational procedures relating to the execution of any of the above duties and responsibilities.

I-2-2.03 - Purchases made by Departments

Each Department has the authority to purchase supplies, materials, equipment and services not to exceed Ten Thousand Dollars ($10,000) or less. For supplies, materials, and equipment, the department shall use a Procurement Card or submit a Purchase Requisition to Finance for issuance of a Purchase Order. For services with a value greater than One Thousand Dollars ($1,000), the department shall submit a Purchase Requisition to Finance for issuance of a contract and ensure compliance with insurance requirements as promulgated by the Risk Manager.~~,~~

I-2-2.04 - Delegation

The Purchasing Agent may delegate authority to purchase supplies, or services, and to dispose of surplus supplies, to other City officials, if such delegation is deemed necessary for the effective procurement or disposal of those items.

Section 3 - Procurement ~~Authority –~~Methods and Procedures

I-2-3.01 ~~– Purchases~~ – Selection of ~~Five Thousand Dollars ($5,000) or Less~~ Solicitation Method

~~Each Requesting Department has the authority to purchase supplies and services for Five Thousand Dollars ($5,000) or less, but must obtain three (3) quotations whenever possible to determine the best value. The Purchasing Agent shall be available to provide ongoing training and support for purchases at the Five Thousand Dollars ($5,000) or less dollar level.~~

~~I-2-3.02 – Purchases Over Five Thousand Dollars ($5,000) and Less Than Twenty Thousand Dollars ($20,000)~~

~~The purchase of supplies and services in an amount over Five Thousand Dollars ($5,000) and less than Twenty Thousand Dollars ($20,000) may be made by the Purchasing Agent through competitive bid, using the following procedures:~~

~~(a) Whenever possible, competitive bid in the open market shall be based on at least three (3) quotations.~~

~~(b) The Purchasing Agent may solicit quotations from prospective vendors both on and off the vendor database. Quotations must be written and may include facsimile and electronic mail.~~

~~(c) The Purchasing Agent shall keep a record of all open-market orders and quotes for a period of one (1) year after the submission of quotes or placing of orders.~~

~~(d) The Purchasing Agent is authorized to award a contract for less than Twenty Thousand Dollars ($20,000) to the lowest responsive and responsible bidder.~~

~~(e) If no responsive bid is received after soliciting quotations, the Purchasing Agent may proceed to purchase the supplies, hire or have services performed in the open market.~~

~~(f) The provisions of Section I-2-3.02 shall not apply to purchases that do not exceed Five Thousand Dollars ($5,000).~~

~~(g) The Purchasing Agent may amend contracts or purchase orders awarded for amounts under Twenty Thousand Dollars ($20,000) as necessary, as long as the total amount of the amended contract does not exceed Twenty Thousand Dollars ($20,000).~~

~~I-2-3.03 – Purchases of $20,000.00 or More~~

~~3.03-1 Formal Bid Procedures. The Purchasing Agent shall solicit bids for supplies, equipment or services of a value of $20,000.00 or more using the following formal sealed bid procedures. The purchase of supplies, equipment or services for a value less than or equal to $100,000.00 may be approved by the City Manager. The purchase of supplies, equipment or services for a value in excess of $100,000.00 must be approved by the City Council.~~

~~(a) A notice of invitation for bid shall include a general description of the supplies, equipment or services to be purchased, state where the bid forms and specifications may be secured, and state the final deadline and method for submitting bids. Notice shall be given as provided in Section I-2-3.05. The Purchasing Agent may also solicit sealed bids from responsible prospective suppliers and contractors whose names are not in the vendor database.~~

~~(b) Bidders shall submit electronic bids through the City's eProcurement System per the instructions in the bid documents.~~

The ~~Bids shall be opened at the time and date indicated in the bid document. A tabulation of all bids received shall be delivered by electronic mail to all registered bidders via the eProcurement System within 72 hours after the bid opening. A tabulation of all bids received shall be posted on the City's website for a period of not less than 30 calendar days after the bid opening.~~

~~(c) The Purchasing Agent or City Council shall have the discretion to reject any and all bids presented, and readvertise for bids.~~

~~(d) The bid shall be awarded to the lowest responsive and responsible bidder.~~

~~(e) If no responsive bid is received after soliciting bids under this section, the Purchasing Agent may proceed to purchase the supplies, equipment hire or have services performed in the open market.~~

~~3.03-2 Exceptions. The bidding procedures under Sections I-2-3.02 and I-2-3.03 may be dispensed with:~~

~~(a) In an emergency as defined in Section I-2-3.10;~~

~~(b) Where it is determined that the supply or service is available from only one source, as defined in Section I-2-3.09, Sole source procurement. The basis upon which this determination is made shall be in writing;~~

~~(c) Where supplies and services are purchased through a piggyback arrangement pursuant to Section I-2-3.07 or a cooperative purchasing arrangement pursuant to Section I-2-3.08;~~

~~(d) Where, in the best interests of the City, supplies and services are purchased through the Request for Sealed Proposals method pursuant to Section I-2-3.06.~~

~~3.03-3~~City shall where practicable engage in competitive procurement. The Purchasing Agent shall use the following solicitation methods under the circumstances described below:

(a) Purchases which are estimated not to exceed ten thousand dollars may be made without a competitive procurement method.
(b) Request for quotes process shall be used for purchases with an estimated value of more than ten thousand dollars and no more than fifty thousand dollars.
(c) Request for proposals process shall be used for purchases of services with an estimated value of more than fifty thousand dollars and for supplies, materials and equipment when the Purchasing Agent determines that it is in the best interest of the City to do so.
(d) Request for qualifications process may only be used for purchases of professional services with an estimated value of more than fifty thousand dollars.
(e) Formal bidding process shall be used for purchases of supplies, materials and equipment with an estimated value of more than fifty thousand dollars or for services when the Purchasing Agent determines that it is in the best interest of the City to do so.

I-2-3.02 - Split Orders~~.~~

It is a violation of the Ordinance to divide the purchase of supplies or general services ~~in the amount of $20,000.00 or more~~ into smaller orders for the purpose of evading the competitive ~~bidding~~solicitation requirements of this ~~section~~Chapter.

~~I-2-3.04 - Competitive Bids~~

~~Where~~

I-2-3.03 - Procurements where competitive methods are not practicable~~.~~

The City is not required to engage in competitive procurement under the following circumstances:

(a) Emergency authority of Purchasing Agent pursuant to Section I-2-3.04
(b) Public agency purchases pursuant to Section I-2-3.05
(c) Sole source procurements pursuant to Section I-2-3.06
(d) As authorized by the City Council to be in the best interest of the City

I-2-3.04 - Emergency Authority of Purchasing Agent

3.04-1 Precluding action by the City Council, the Purchasing Agent may authorize emergency purchases without observing the bidding procedures set forth in this Chapter upon a finding that such purchases are required to prevent or mitigate the loss or impairment of life, health, property, or essential public services and that there is sudden, unexpected occurrence that poses a clear and imminent danger. The Purchasing Agent may purchase supplies or services, even though the amount thereof may exceed Fifty Thousand Dollars ($50,000), without competitive bids upon notice.

3.04-2 Not later than seven (7) days after the emergency action, or at the next succeeding City Council meeting if that meeting will occur not later than 14 days after the action, the Purchasing Agent shall submit to the City Council a written statement of the circumstances of such emergency purchase over Fifty Thousand Dollars ($50,000), a description of the supplies or services purchased, and the prices thereof.

3.04-3 The City Council shall continue to review the emergency action at every subsequent regularly scheduled meeting thereafter until the action is terminated, to determine, by a four-fifths vote, that there is a need to continue the action, unless the Purchasing Agent has terminated the action prior to the City Council reviewing the emergency action.

I-2-3.05 – Public Agency Purchases

The Purchasing Agent may without observing the competitive procurement requirements prescribed by this Chapter:

(a) Purchase or acquire any supplies, materials or equipment or services from any public or governmental body or agency; or
(b) Joint purchasing agreements entered into by the City and one or more public agencies wherein the City is included as a potential purchaser under a competitive procurement process engaged in pursuant to the joint agreement; or
(c) The Purchasing Agent may arrange for the City to enter into purchase contracts with a supplier or contractor for the purchase of supplies or general services, the pricing and terms of which have been previously established by another public agency or improved pricing and terms, provided that the Purchasing Agent determines that such purchase contracts are in the City's best interest; or
(d) The Purchasing Agent may purchase supplies and services without complying with the quotation or bidding requirements of this Chapter, if such purchases are based on an agreement or entered into by any public agency or cooperative purchasing program utilizing public agency procurements as the basis for contracts offered, regardless of whether the City is a named party to the agreement or an actual participant in such a program, provided that:
   i. The underlying purchase was made using competitive negotiation or procurement procedures, and may include a nationally bid cooperative contract; and
   ii. The public agency is a "public agency" as defined in Government Code section 6500.

I-2-3.06 - Sole Source Procurement

A contract may be awarded without competition when the Purchasing Agent determines in writing, after conducting a good faith review of available sources, that only one viable source exists for the required supplies, material, equipment, or general service, or that there is a compelling reason for using only one source. The Purchasing Agent shall conduct negotiations, as appropriate, as to price, delivery and terms. A written statement of the basis for the sole source determination and the period of the sole source approval shall be placed in the contract file.

Not later than August 31st annually, the Purchasing Agent shall provide to the City Council a list of all sole source contracts entered into or renewed during the past fiscal year including the name of the department, description of the product or general service, vendor, and dollar amount.
~~are required, they shall be submitted electronically~~

I-2-3.07 – Request for Quotes (RFQ) Procedure

(a) The Purchasing Agent shall issue a Request for Quotes indicating the basis of award through the City's e-procurement system and vendors known to be able to provide the supplies and services and base the award of the contract, whenever possible, on at least three (3) quotations.
(b) Responses must be in writing as instructed in the Request for Quotes.
(c) If no responsive quote is received after issuance of a Request for Quotes, the Purchasing Agent may proceed to purchase the supplies, hire or have services performed in the open market provided that negotiations are conducted as appropriate as to price, terms and conditions of contract award.

I-2-3.08 - Formal Bid Procedures~~.~~

(a) A notice of invitation for bid shall include a general description of the supplies, equipment or services to be purchased, state where the bid forms and specifications may be secured and state the final deadline and method for submitting bids. Notice shall be given as provided in Section I-2-3.10.

(b) Bidders shall submit electronic bids through the City's eProcurement System per the instructions in the bid documents. Any bid may be withdrawn by a written request signed by the bidder and received by the Purchasing Agent prior to the final time and date for the receipt of bids.~~City's eProcurement System per the instructions in the bid documents.~~

(c) Bids shall be opened at the time and date indicated in the bid document. A tabulation of all bids received shall be delivered ~~by electronic mail~~ to all registered bidders via the eProcurement System within 72 business hours after the bid opening. A tabulation of all bids received shall be made available on the City's eProcurement System or website for a period of not less than 30 calendar days after the award of the bid.

~~Where competitive bids are required, the purchase or disposal shall be made on the basis of three or more of said bids, unless the Purchasing Agent shall certify in writing that less than three prospective bidders have submitted bids or that, to the best of the Agent's knowledge, there are less than three prospective vendors from whom the supplies or services are available and that bids were invited from all of said vendors. Any bid may be withdrawn by a written request signed by the bidder and received by the Purchasing Agent prior to the final time and date for the receipt of bids.~~

(d) The Purchasing Agent or City Council shall have the discretion to reject any and all bids presented and re-advertise for bids.

(e) The bid shall be awarded to the lowest responsive and responsible bidder.

(f) If no responsive bid is received after soliciting bids under this section, the Purchasing Agent may proceed to purchase the supplies, hire, or have services performed in the open market provided that negotiations are conducted as appropriate as to price, terms and conditions of contract award.

I-2-3.~~05 - Competitive Bids (Notice)~~

~~For purchases under Sections I-2-3.03, Purchases of $20,000.00 or More, and I-2-3.06,~~09 - Request for ~~Sealed~~ Proposals (RFP~~), where notice is required, notice shall be given by one or more of the following methods:~~

~~(1) Publishing notice in a newspaper of general circulation within the City on at least one occasion at least five days prior to the date set for the final receipt of bids. Provided, that publication may be made in any newspaper of general circulation in Santa Clara County which the Purchasing Agent shall select if the publication schedule of all newspapers of general circulation in the City are such that notice by publication cannot be given in time.~~

~~(2) Posting on the City of Milpitas website at least five days prior to the date set for the final receipt of bids.~~

~~(3) Through direct electronic notification via the City's eProcurement System.~~

~~(4) Any other manner of notice required by law for the particular goods or services to be purchased.~~

~~Nothing in this subsection shall prohibit the City from notifying suppliers and contractors of solicitations by electronic means, and nothing in this subsection shall prohibit the City from notifying suppliers and contractors who are not in the City's Vendor Database.~~

~~The notice shall include a general description of the supplies or services to be purchased or City property to be disposed; date, time and place of bid opening; and whether bonds will be required. The notice shall also include such information as to the proposed purchase or disposal as the Purchasing Agent deems sufficient to comply with relevant State law, regulation or City ordinance.~~

~~(Ord. No. 289.1, § 2, 11/7/17; Ord. No. 23.12, § 2, 5/5/09; Ord. 23.10 (part), 1/3/06)~~

~~I-2-3.06 - Request for Sealed Proposals (RFP)~~

~~3.06~~) Procedure

3.09-1 The Purchasing Agent shall be authorized to utilize the request for ~~sealed~~ proposal method for purchase of supplies or services upon a determination by the Purchasing Agent that the use of competitive bidding is not practical or advantageous to the City because of one (1) or more of the following considerations:

(a) Price is not a primary consideration;

(b) The ability of the bidder to perform the contract or provide the service promptly, or within the time specified, without delay or interference;

(c) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;

(d) The quality of performance of previous contracts or services;

(e) Quality, availability, or capability is overriding in relation to price in procurement of research, development, technical supplies or services;

(f) Delivery and installation, post-sale service or maintenance, reliability, warranties or availability of replacements, are overriding in relation to price or need to be evaluated in relation to prices;
(g) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
(h) The need to evaluate the utilization of a fixed-price or cost-type contract;
(i) The need to evaluate whether the ~~market place~~marketplace will respond better to a solicitation permitting a range of alternative proposals or evaluation and discussions of them before entering the contract;
(j) The number and scope of conditions attached to the Solicitation.

3.~~06~~09-2 Receipt of Proposals.

No proposals shall be handled so as to permit disclosure of ~~the identity of any bidder or~~ the contents of any proposal to competing bidders during the process of negotiation. A register of proposals shall be prepared containing the name of each bidder ~~and a description sufficient to identify the item offered.~~. The register of proposals shall be open for public inspection only after contract award.

3.~~06~~09-3 Evaluation Factors.

The request for proposals shall state evaluation factors, which shall be considered the primary basis for evaluating the proposals.

3.~~06~~09-4 Discussion with Responsible Bidders and Revisions to Proposals.

Discussions may be conducted with responsible bidders who submit proposals determined to be reasonably possible of being selected for award, for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. All bidders shall be accorded equal treatment. Revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of the bidder or any information contained in competing offers.

3.~~06~~09-5 Award.

Award shall be made to the responsible bidder whose proposal is determined in writing to be the most advantageous to the City, taking into consideration, price, value and the evaluation factors set forth in the request for proposals.

3.~~06~~09-6 Rejection.

Without limitation to the applicability of any other provisions of this C~~c~~hapter, the Purchasing Agent or City Council may reject any and all proposals.

I-2-3.~~07 - Piggyback Procurement~~10 - Request for Qualifications (RFQa) Procedure

3.10-1 The Purchasing Agent ~~may arrange for the City to enter into purchase contracts with a supplier or contractor~~shall be authorized to utilize the request for ~~the~~ qualification method for purchase of ~~supplies or general~~professional services~~, the pricing and terms of which have been previously established~~ upon a determination by ~~another public agency, provided that the~~ the Purchasing Agent ~~determines that a "piggyback" purchase is in the City's best interest. The Purchasing Agent is required to determine and apply all of the following, prior to entering into the purchase:~~

~~(1) There are no local suppliers or contractors who could provide the product or service at~~ that the use of competitive ~~rates;~~

~~(2) A copy of the solicitation has been obtained from the originating agency and reviewed for compliance with the City's Purchasing Ordinance;~~

~~(3) The specifications of the item or service required by the City are not materially different from those specified in the originating agency's solicitation;~~

~~(4) The price of the purchase is lower than that estimated for the purchase if made directly by the City pursuant to this Ordinance;~~

~~(5) The contract resulting from the original solicitation is current or the solicitation is within two (2) years from the date of the City's order, or written justification is provided justifying use of an older solicitation;~~

~~(6) No more than a ten percent (10%) variation is allowed for customizing the order or for desirable options. In addition, a cost of living adjustment (using San Francisco-Oakland-San Jose Consumer Price Index – All Urban Consumers) can be added for up to two (2) years; and~~

~~(7) The City enters into a separate contract with the vendor selected by the originating agency, and incorporates by reference the original solicitation, terms, conditions and prices.~~

~~I 2-3.08 - Cooperative Procurement~~

~~3.08-1 The Purchasing Agent may purchase supplies and general services without complying with the quotation or~~ bidding ~~requirements of this Chapter, if such purchases are based on an agreement or cooperative purchasing program entered into by any public agency, regardless of whether the City is a named party to the agreement or an actual participant in such a program, provided that~~is not practical or advantageous to the City because of one (1) or more of the following considerations:

~~(a) The underlying purchase was made using competitive negotiation or bidding procedures at least as restrictive as the City's, and may include a nationally bid cooperative contract; and~~

~~(b) The public agency is a "public agency" as defined in Government Code section 6500.~~

~~3.08-2 In all such cases, the supplies or general~~(a) Price is not part of the scoring criteria;

(b) For establishing a pool of qualified bidders;

(c) The ability of the bidder to provide the service promptly, or within the time specified, without delay or interference;

(d) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;

(e) The quality of performance of previous services;

(f) Quality, availability, or capability is overriding in relation to price in procurement of research, development, technical services ~~purchased must~~;

(g) The sufficiency of the financial resources and ability of the bidder to provide the service;

(h) The need to evaluate whether the marketplace will respond better to a solicitation permitting a range of alternative proposals or evaluation and discussions of them before entering the contract;

(j) The number and scope of conditions attached to the Solicitation.

3.10-2 Receipt of Statements of Qualifications.

No statements of qualifications ("SOQs") shall be ~~the same~~handled so as to permit disclosure of the contents of any SOQs to competing bidders during the process of negotiation. A register of SOQs shall be prepared containing the name of each bidder. The register of SOQs shall be open for public inspection only after contract award.

3.10-3 Evaluation Factors.

The request for qualifications shall state evaluation factors, which shall be considered the primary basis for evaluating the SOQs.

3.10-4 Discussion with Responsible Bidders and Revisions to SOQs.

Discussions may be conducted with responsible bidders who submit SOQs determined to be reasonably possible of being selected for award, for the purpose of cost, clarification to assure full understanding of, and conformance to, the solicitation requirements. All bidders shall be accorded equal treatment. Revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of the bidder or any information contained in competing offers.

3.10-5 Award.

Award shall be made to the responsible bidder whose SOQ is determined in writing to be the most advantageous to the City, taking into consideration value and the evaluation factors set forth in the request for qualifications.

3.10-6 Rejection.

Without limitation to the applicability of any other provisions of this Chapter, the Purchasing Agent or City Council may reject any and all SOQs.

I-2-3.11 – Noticing of Solicitations for estimated Purchase of more than $50,000

For purchases with an estimated value of more than $50,000, where notice is required, notice shall be given by one or more of the following methods:

(1) Publishing notice in a newspaper of general circulation within the City on at least one occasion at least five days prior to the date set for the final receipt of bids. Provided, that publication may be made in any newspaper of general circulation in Santa Clara County which the Purchasing Agent shall select if the publication schedule of all newspapers of general circulation in the City are such that notice by publication cannot be given in time.
(2) Posting on the City of Milpitas website at least five days prior to the date set for the final receipt of bids.
(3) Through direct electronic notification via the City's eProcurement System.
(4) Any other manner of notice required by law for the particular goods or services to be purchased.

~~be offered at the same price as the supplies~~Nothing in this section shall prohibit the City from notifying prospective firms of solicitations by electronic means, and nothing in this section shall prohibit the City from notifying prospective firms who are not in the City's Vendor Database.

The notice shall include a general description of the goods or services to be purchased or City property to be disposed; date, time and place of bid opening; and whether bonds will be required. The notice shall also include such information as to the proposed purchase or disposal as the Purchasing Agent deems sufficient to comply with relevant State law, regulation or City ordinance.

~~services subject to the agreement or program.~~

I-2-3.12 – Use of "or equals" in specifications and testing of "equals~~.~~"

(a) Any reference to a specific brand name followed by the term "or equal" in specifications is illustrative only. A reference to a brand name or equal describes a component best meeting the specific operational, design, performance, maintenance, quality, and reliability requirements of the City.
(b) A bidder may offer an equivalent ("or equal") in response to a brand name or equal reference. When an "or equal" is offered, the City may test and evaluate the product prior to award of the contract and the City determines if "an equal" offered meets the specification.
(c) At bidder's expense, bidder bears sole responsibility for providing any information, test data or document required by the City to fully evaluate the acceptability of the "or equal~~.~~" at bidder's expense, this full evaluation may require independent testing, including destructive testing, at qualified test facilities.
(d) If the City rejects a response or part of a response containing any "or equal," the Purchasing Agent shall determine the decision in writing.

~~I-2-3.09 - Sole Source Procurement~~

~~A contract may be awarded without competition when the Purchasing Agent determines in writing, after conducting a good faith review of available sources, that there is only one (1) source for the required supply or service. The Purchasing Agent shall conduct negotiations, as appropriate, as to price, delivery and terms. A written statement of the basis for the sole source determination shall be placed in the contract file. The sole source designation shall remain effective for five (5) years unless the Purchasing Agent determines the classification is no longer warranted.~~

~~I-2-3.10 - Emergency Authority of Purchasing Agent~~

~~3.10-1 Precluding action by the City Council, the Purchasing Agent may authorize emergency purchases without observing the bidding procedures set forth in this chapter upon a finding that such purchases are required for the immediate preservation of the public health, safety, or welfare and that there is an immediate or imminent emergency. The Purchasing Agent may purchase supplies or services, even though the amount thereof may exceed Twenty Thousand Dollars ($20,000), without competitive bids upon notice.~~

~~3.10-2 At the next succeeding City Council meeting, the Purchasing Agent shall submit to the City Council a written statement of the circumstances of such emergency purchase over Twenty Thousand Dollars ($20,000), a description of the supplies or services purchased, and the prices thereof.~~

~~I-2-3.11 - Authority to Modify Contracts Awarded by City Council~~

~~The Purchasing Agent is authorized to enter into and execute for and on behalf of the City, without the prior approval of the City Council, any amendment or change order to a supply or general service contract previously approved by the Council within the following guidelines.~~

~~(1) To extend the term of the contract, at the recommendation of the Requesting Department, for a period not to exceed six (6) consecutive months from the last Council-approved expiration date;~~

~~(a) (2) To make minor revisions to the scope of services or schedule;~~

~~(b) (3) To make clerical corrections; or~~

~~(c) (4) The Purchasing Agent may also approve and sign assignments of contracts previously approved by the City Council when he or she has determined that the proposed assignee has the ability, capacity, experience and skill and is otherwise qualified to perform the contract.~~

~~All modifications to contracts, including, but not limited to, changes to the scope of the work, quantity of goods, price or term shall be made in writing and approved by the Requesting Department. Amendments or change orders are permitted only if the modification would not cause the contract to exceed the monetary limits defined below:~~

~~Individual Change Order Authority~~	~~Cumulative Change Order Authority~~
~~10% of Award or $5,000 whichever is less~~	~~15% of Award or $7,500 whichever is less~~
~~10% of Award or $10,000 whichever is less~~	~~15% of Award or $20,000 whichever is less~~

~~All contract changes must be reflected on the Purchase Order and/or contract amendment. All other changes outside the parameters defined in this section must be approved by the City Council.~~

~~(5) This subsection does not apply to contracts for professional services.~~

I-2-3.12 - Contracting for Consultants

~~3.12-1 The City Council finds and declares that the competitive bid process is ill-suited for the selection of consultants.~~3.12-1 Consultants are required for professional or technical expertise and for matters requiring specialized abilities or a high degree of skill. Their numbers (in relation to a particular skill or expertise required) are comparatively limited. Where consultants are involved, the bidding process is not likely to result in a lower price to the City or eliminate unnecessary expense or delay. However, the request for proposals (RFP) process established in I-2-3.08, the request for qualifications (RFQa) process established in I-2-3.09, or a similar process based on evaluating consultant qualifications, is better suited.

3.12-2 ~~The requesting department shall be empowered to engage a consultant (including, but not limited to, material testing services and construction inspection services) without the necessity of competitive bidding or notice thereof:~~

~~(a) Without City Council approval if the consultant's total fee for materials and services under the contract by which the consultant is engaged does not exceed $100,000.00.~~

~~(b) With City Council approval if the consultant's total fee for materials and services under the contract by which the consultant is engaged exceeds $100,000.00.~~

~~3.12-3~~ Architects, Engineers and Land Surveyors.

In addition to the provisions of ~~paragraphs~~paragraph 3.12-1 ~~and 3.12-2~~ of this ~~subsection~~section, the following requirements shall be applicable to the selection of architects, engineers and land surveyors.

(a) The requesting department or division head shall negotiate a contract with the ~~best qualified firm for~~firm that possesses the demonstrated competence and professional qualifications for the required architectural, engineering and land-surveying services.

(b) Should the requesting department or division head be unable to negotiate a satisfactory contract with the firm considered to be ~~the most~~competent and qualified, at a price determined to be fair and reasonable, negotiations with that firm shall be formally terminated. The requesting department or division head shall then undertake negotiations with the second most qualified firm. Failing accord with the second

most qualified firm, the requesting department or division head shall formally terminate negotiations. The requesting department or division head shall then undertake negotiations with the third most qualified firm.

(c) Should the requesting department or division head be unable to negotiate a satisfactory contract with any of the selected firms, the requesting department or division head shall select additional firms in order of their competence and ~~qualification,~~qualifications and continue negotiation until an agreement is reached.

I-2-3.13 - Standardization

3.13-1 Where the Purchasing Agent has determined that it is required for the health, safety or welfare of the people or employees of the ~~city~~City, or that ~~significant~~ cost savings have been demonstrated, standardization of supplies, materials or equipment, including information and communication technology products and services, for purchase or to be used in a public works project, shall be considered. The specifications may stipulate a single brand or trade name. Among the factors that may be considered in determining to standardize on a single brand or trade name are that:

~~i. (a) Repair or maintenance costs would be minimized;~~

(a) ~~(b) Training of user~~ In order to acquire a specific product(s) for the purpose of conducting a field test or experiment to determine the product's suitability for use by the City.

(b) When it is required for proper operation or function to match other products with respect to the repair or expansion or completion of a system or program already in use by the City, including, but not limited to, technology purchases required to achieve interoperability with existing hardware, software, systems or programs.

(c) In order to achieve significant cost savings based upon consideration of the following cost factors:

1. Timeliness and~~/or~~ quality of installation, repair and maintenance ~~personnel would be simplified;~~ ;
2. ~~(c)~~ Quality of user training;
~~2.~~3. Supplies ~~or spare~~and replacement parts ~~would be readily available;~~ ;
4. ~~(d) Modifications to~~ Modification of existing equipment ~~would not~~ , materials or systems;
5. Future upgrades and updates;
6. Estimated amount and cost of reasonably foreseeable future purchases of equipment that would be required to be compatible or functional with the product which is the subject of the standardization determination.
7. Administrative costs.

3.13-2 The Purchasing Agent's written decision shall state the facts reviewed in arriving at the decision, the reasons for the decision, the period of time for which it is valid for making purchases and under what conditions it must be reviewed for possible revision. A copy of the Purchasing Agent's decision shall be ~~necessary;~~ attached to any report to the City council seeking approval of a purchase under this section.

~~(e) Matching existing supplies, materials or equipment is required for proper operation of a particular piece of equipment or City program.~~

3.13-~~2~~3 Available Competition.

When there is more than one (1) source for the standardized supply or service, competitive ~~bidding~~procurement in accordance with Sections I-2-3.~~02 Purchases of Over Five Thousand Dollars ($5,000) and Less than Twenty Thousand Dollars ($20,000) and~~06, I-2-3.~~03 Purchases of Twenty Thousand Dollars ($20,000) or More~~07 and I-2-3.08 is required.

3.13-~~3 Approval. The~~ 4 Annual Report.

Not later than August 31st annually, the Purchasing Agent shall provide to the City Council ~~has the final authority to approve~~a list of all standardizations approved during the past fiscal year including the product, manufacturer, and reasons for the standardization ~~of supplies or services based on the recommendation of staff. The standardization shall be valid for no more than ten (10) years, but may be revised sooner if the Purchasing Agent or requesting department can show substantial justification for an earlier revision. (Ord. 23.10 (part), 1/3/06)~~as authorized in this section.

I-2-3.14 - Local Purchasing Preference

3.14-1 Application of Local Preference.

The provisions of this section and the local preference established pursuant to this section shall be applicable to the following types of purchases or contracts executed in excess of ~~Five~~Ten Thousand Dollars ($~~5~~10,000) and pursuant to either a formal or an informal bid:

(a) Purchases or contracts for the purchase of supplies, materials and equipment; and
(b) Purchases or contracts for ~~nonprofessional~~ services that are not otherwise of the kind contemplated by Section I-2-3.~~12~~11.

3.14-2 Exceptions to the Application of Local Preference.

The provisions of this section and the local preference established pursuant to this section shall not be applicable to the following types of purchases or contracts:

(a) Purchases or contracts for professional services of the kind contemplated by Section I-2-3.~~12~~11;
(b) Public works contracts;
(c) Emergency purchases made pursuant to Section I-2-3.~~10~~03;
(d) Sole source purchases made by the Purchasing Agent pursuant to Section I-2-3.~~09~~05;
(e) ~~Piggyback~~Public Agency purchases made by the Purchasing Agent pursuant to Section I-2-3.~~07~~04;
(f~~) Cooperative purchases made by the Purchasing Agent pursuant to Section I-2-3.08;~~
~~(g~~) Purchases or contracts where legal constraints on the expenditure of funds prohibit the application of the local preference or those contracts funded by the federal or state government, including federal or state grant funding, when such funding would be jeopardized by application of the local preference.

3.14-3 Reduction of Bid by Eligible Local Provider; Procedure for Applying the Local Preference.

In contracting for ~~equipment, materials~~, supplies or services as specifically set forth in this section, the City shall grant preference to a local provider who submits a bid within ten percent (10%) of the lowest responsible bidder and who is otherwise responsive and responsible to the invitation for bids, which preference shall allow the local provider the opportunity to reduce its bid to an amount equal to the amount of the lowest responsible bid, if the lowest responsible bid is submitted by other than an Eligible Local Provider. In the event an Eligible Local Provider reduces its bid to the amount of the lowest responsible bid, the Eligible Local Provider shall be deemed to have provided the lowest responsible bid and shall be awarded the contract.

(a) The preference and opportunity to reduce the amount of the bid shall be provided first to the lowest Eligible Local Provider and, if not accepted by such Eligible Local Provider within five (5) business days of the opening of the bids, then to each successive Eligible Local Provider who is within ten percent (10%) of the lowest responsible bid, in ascending order of the amount of the bids.
(b) The local provider shall certify under penalty of perjury, as a part of its bid and in a form and manner as required by the City, that the bidder qualifies as a local provider. The preference established in this section shall be waived if the certification does not appear on the respective bid.

3.14-4 No Exemption from Local Sales Tax.

The application of a local preference as set forth in this section shall not exempt any Eligible Local Provider to which a contract is executed or awarded from having to pay all applicable federal, state or local sales tax.

I-2-3.15 - Recycled Product Procurement

3.15-1 The City of Milpitas is committed to the conservation and protection of state and local resources; therefore, bidders able to supply recycled products and products containing recycled and environmentally preferable materials that meet performance requirements are encouraged to offer them in bids and proposals. The Purchasing Agent shall purchase recycled products whenever they are available at the same total cost and the fitness and quality are equal to or better than that of ~~nonrecycled~~non-recycled products.

~~(a) The City shall require all businesses doing business with the City to certify in writing the minimum, if not exact, percentage of postconsumer materials in the products or supplies offered or sold to the City. All contract provisions impeding the consideration of recycled products shall be deleted in favor of performance standards.~~

~~(b) With respect to printer or duplication cartridges, a certification from the vendor is required to specify that the cartridges are remanufactured and are in compliance with the requirements of Section 12156 (e) of the Public Contract Code.~~

~~(c~~(a) The City shall require contractors and consultants to use environmentally preferable products, and use products manufactured with the maximum practicable amount of post-consumer material, whenever cost effective and to the extent practicable.

~~(d) The City shall ensure that they and their contractors use recycled paper in printed material that bears an imprint identifying the recycled content of the paper, whenever practicable.~~

~~(e~~(b) The City shall ensure that they and their contractors use both sides of paper sheets whenever practicable.

(~~f~~c) To the extent possible, the recycled product preference cost shall apply to the bids where the City has made multiple awards, so as to maximize the dollar participation of firms offering recycled products.

~~(b)~~(d) ~~(g) All~~To the extent possible, all printing contracts made by the City shall specify that the paper used shall meet the recycled content requirement of thirty percent (30%) postconsumer fiber~~ as specified in Section 12209 of the Public Contract Code~~.

(~~h~~e) The City may specify recycled content at levels higher than the minimum content standards.

3.15-2 ~~The~~Where the use of recycled products is designated, the Purchasing Agent s~~S~~hall:

(a) Maintain a list of designated recycled products that contain ~~the maximum~~a practicable amount of recovered material and are consistent with State and Federal guidelines and~~ shall~~ coordinate with all departments to purchase environmentally preferable products whenever practicable.

(b) ~~Grant~~Where the contract is competitively solicited, grant the supplier of recycled products with a minimum of 10% recycled content in its product(s) a preference of ten percent (10%) based on the bid or price quoted by supplier of recycled products when determining the lowest responsive and responsible ~~bidder~~or highest ranked bidder depending upon procurement process used.

(~~c~~b) Inform Departments of processes and procedures that are environmentally preferable in order to facilitate their evaluation and use by the Departments whenever practicable.

(~~d~~c) Monitor contracting procedures to ensure that they do not discriminate against recycled products without justification, and that they maximize the specification of designated recycled products whenever practicable.

I-2-3.15 – Testing and Inspection of Samples

3.15-1 The Purchasing Agent may require vendors to provide samples to be tested and inspected as part of the applicable procurement process. The Purchasing Agent shall have the authority to require chemical, physical, or other tests of samples submitted with bids which are necessary to determine quality and conformance to the specifications. In the performance of such tests, the Purchasing Agent shall have the authority to make use of laboratory facilities of any department of the City or any outside laboratory at the bidder's expense.

I-2-3.16 - ~~Brand Names or Equal Specification~~

~~3.16-1 Purpose and Use. Brand name or equal specifications may be used when the Purchasing Agent determines that:~~

~~(a) No other design or performance specification or qualified products list is available;~~

~~(b) Time does not permit the preparation of another form of purchase description, not including a brand name specification;~~

~~(c) The nature of the product or the nature of the City's requirements makes use of a brand name or equal specification suitable for the procurement; or~~

~~(d) Use of a brand name or equal specification is in the City's best interests.~~

~~3.16-2 Designation of Brand Names.~~

~~(a) Brand name or equal specifications shall state that substantially equivalent products to those designated will be considered for award.~~

~~(b) Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition.~~

~~I-2-3.17 –~~Waiver of Informalities: Rejection of ~~Bids~~Responses

Where the Purchasing Agent or City Council are required to make purchases upon competitive ~~bids~~solicitations, said Purchasing Agent or City Council may waive any informalities or minor irregularities related to the procurement process, solicitation documents or responses or may reject any and all ~~bids~~responses (anything herein contained to the contrary notwithstanding) if said Purchasing Agent or City Council deems said rejection to be in the best interests of the City. Said rejection shall be at the sole discretion of the Purchasing Agent or City Council, as the case may be. Upon rejection of ~~bids~~responses, the Purchasing Agent or the City Council, as the case may be, may:

(1) Give subsequent notice for a new competitive ~~bids~~solicitation;
(2) Postpone said purchase or disposal definitely or indefinitely; or
(3) Elect to make the purchase without competitive ~~bids~~solicitation, upon notice (and as if a competitive ~~bids~~solicitation, upon notice, had not been required in the first instance) in accordance with the authority granted by the various subsections of this s~~S~~ection.

I-2-3.17 – Insurance and Bonds

(a) The Purchasing Agent is authorized to require vendors to provide insurance and surety bonds for contracts. Where required, the bidder shall submit insurance or surety bonds, or both, acceptable to the City.
(b) Where required by the Purchasing Agent, all responses to solicitations shall include such bidders' security as is required by the solicitation documents and shall be presented under sealed cover. If the successful bidder fails to execute the contract within the time specified in the notice inviting bids or in the specifications referred to therein, the bidders' security may be declared forfeited by the Purchasing Agent to the City, and any bonds so forfeited may be prosecuted and collected and the amount of the security paid into the general fund. Unsuccessful bidders shall be entitled to return of their bidders' security. The form and amount of such security shall be described in the notice inviting responses or in the specifications referred to therein.
(c) To secure faithful performance of the contract, the Purchasing Agent is authorized to require security in the form of cash, cashier's check, certified checks, or corporate faithful performance bonds, in such amount as the Purchasing Agent shall deem reasonably necessary to protect the best interests of the City. If the Purchasing Agent requires such security, the form and amount thereof shall be described in the notice inviting responses or in the specifications referred to therein. Unless otherwise required by law or the funding source, the Purchasing Agent need not require such security if the Purchasing Agent does not deem such to be reasonably necessary to protect the best interest of the City, or if the Purchasing Agent believes the interests of the City are best served by not requiring the same.

I-2-3.18 ~~– Bonds~~

~~When deemed necessary by the Purchasing Agent or City Attorney, any person entering into a contract with the City may be required to furnish bid, labor and materials, and/or performance bonds for supply or service contracts as required by law or as deemed advisable to protect the City's interests. All bond requirements shall be set forth in the solicitation. Bonds shall not be used as a substitute for a determination of a bidder's responsibility. Said person (and his surety, if a bond is furnished) shall be liable for any damages upon said bidder's failure to faithfully perform the terms of his contract.~~

~~I-2-3.19 – Bid~~ – Protest Procedure

3.~~19~~18-1 Any interested party may file a protest to ~~an~~a proposed award of ~~bid~~a contract in an amount over ~~Five~~Ten Thousand Dollars ($~~5~~10,000). The protest shall be filed with the Purchasing Agent in writing no later than ~~ten (10~~seven (7) calendar days after the posting of the intent to award and shall set forth the basis for the protest and any proposed remedy. ~~The time to file a protest shall commence when the award is posted on the City's website.~~

~~3.19-2 If a protest is filed, the award shall be suspended until the Purchasing Agent determines the validity of the protest, unless the Purchasing Agent determines that the purchase or services of the award must proceed prior to the protest hearing in order to protect the public health, safety and welfare.~~

~~3.19-3 The Purchasing Agent shall hear~~3.21-2 The Purchasing Agent will review the protest as soon as possible and ~~shall notify interested parties of the date, time and place for the protest hearing. Notice may be provided in writing by fax, email, or mail.~~

~~3.19-4 The Purchasing Agent shall hear such evidence as the Purchasing Agent deems relevant. The protest hearing shall be voice recorded. The decision of the Purchasing Agent shall be made as soon as possible. Notice of the decision shall be provided in any manner that the original notice of hearing may be given.~~will provide a written response to the protestor. The Purchasing Agent's decision on a bid protest for a procurement in an amount ~~less~~no more than ~~Twenty~~Fifty Thousand Dollars ($~~20~~50,000) shall be final.

3.~~19-5~~18-3 For procurements having a value of ~~Twenty~~more than Fifty Thousand Dollars ($~~20~~50,000~~) or more, an appeal of the Purchasing Agent's decision may be filed with~~), the City Council~~. All such appeals must be in writing, and shall be filed with the City Clerk within ten (10) calendar days of serving the Purchasing Agent's decision~~ will consider the protest and take action thereupon, which action shall be final.

I-2-3.~~20~~19 - Public Works Contract Purchasing Procedures

3.~~20~~19-1 Definitions.

For the purposes of this Section I-2-3.~~20~~19 the following words and phrases shall have the following meanings:

1. Act means the Uniform Public Construction Cost Accounting Act (California Public Contracts Code ~~Section~~section 22000 et seq.).
2. Commission means the California Uniform Construction Cost Accounting Commission.
3. Facility means any plant, building, structure, ground facility, utility system, subject to the limitation of subsection 4 of the definition for public project below, real property, streets and highways, or other public works improvement.
4. Public project has the meaning assigned to it under Public Contract Code ~~Section~~section 22002, as it may be amended from time to time.

3.~~20~~19-2 Public Project Contracting Procedures.

The City shall follow the contracting procedures set forth in Article 3 of Act (Public Contract Code ~~Section~~section 22030 et seq.). The City shall procure public projects by force account, negotiated contract, purchase order, informal bidding or formal bidding as required in accordance with the applicable dollar amount limitations under Section 22032 of the Act, as it may be amended from time to time.

3.~~20~~19-3 Contractors List.

The Directors of Engineering and Public Works, in coordination with the City's Purchasing Agent, shall compile and maintain a list of qualified contractors identified according to categories of work. This list shall comply with the requirements of Section 22034 of the Act and the criteria promulgated, from time to time, by the Commission.

3.~~20~~19-4 Informal Bidding - Notice.

(a) When a public project is to be performed which qualifies for informal bidding, notice of such project shall be given as follows unless an exception to competitive bidding applies:
   (1) Mailed notice shall be sent to all contractors on the contractors list for the category of work being bid; and
   (2) Mailed notice shall be given to all construction trade journals specified by the Commission for the receipt of such notice for Santa Clara County; and
   (3) Additional notice to other contractors and/or trade journals may, in the discretion of the City, be given.

(b) If the product or service to be acquired is proprietary in nature such that it can only be obtained from a certain contractor or contractors, notice inviting bids may be sent only to such contractor or contractors.

(c) All mailing of notices to contractors and construction trade journals shall be completed not less than ten days before bids are due.

(d) The notice shall describe the project in general terms, how to obtain more detailed information about the project and shall state the time and place for submission of bids.

3.~~20~~19-5 Formal Bidding—Notice.

(a) When a public project is to be performed that requires formal bidding, notice of such project shall be given as follows unless an exception to competitive bidding applies:

(1) The notice shall state the time and place for the receiving and opening of sealed bids and distinctly describe the project.

(2) The notice shall be published at least 14 calendar days before the date of opening the bids in a newspaper of general circulation, printed and published in the City; or, if there is no newspaper printed and published within the jurisdiction of the City, in a newspaper of general circulation which is circulated within the City.

(3) The notice inviting formal bids shall also be mailed to all construction trade journals specified by the Commission for the receipt of such notice for Santa Clara County. The notice shall be mailed at least 15 calendar days before the date of opening the bids.

3.~~20~~19-6 Award of Contracts.

The City Manager is authorized to award contracts for public projects ~~consistent with the contract authority under I-4-2.00.~~of less than or equal to one-hundred thousand dollars.

3.~~20~~19-7 Rejection of Bids.

The City Manager or the City Council, as the case may be, may, in the Manager's or Council's discretion, reject all bids and proceed as authorized by the Act.

3.~~20~~19-8 Approval of Plans and Designs.

The City Engineer, or designee, is authorized to approve plans and designs, and all amendments and addenda thereto, for performance of a public project of the City.

I-2-3.20 - Authority to Modify Contracts Awarded by City Council

The Purchasing Agent is authorized to enter into and execute for and on behalf of the City, without the prior approval of the City Council, any amendment or change order to a supply or service contract previously approved by the Council within the following guidelines:

(a) To extend the term of the contract, at the recommendation of the Requesting Department, for a period not to exceed twelve (12) consecutive months from the last Council-approved expiration date;

(b) To make minor revisions to the scope of services or schedule;

(c) To make clerical corrections; or

(d) The Purchasing Agent may also approve and sign assignments of contracts previously approved by the City Council when he or she has determined that the proposed assignee has the ability, capacity, experience and skill and is otherwise qualified to perform the contract.

All modifications to contracts, including, but not limited to, changes to the scope of the work, quantity of goods, price or term shall be made in writing and approved by the Requesting Department. Amendments or change orders are permitted only if the modification would not cause the contract to exceed the monetary limits defined below:

Contract Amount	Individual Change Order Authority	Cumulative Change Order Authority
Under $100,000	10% of Award or $10,000 whichever is less	15% of Award or $15,000 whichever is less
Over $100,000	10% of Award or $20,000 whichever is less	15% of Award or $40,000 whichever is less

All contract changes must be reflected on the Purchase Order and/or contract amendment. All other changes outside the parameters defined in this section must be approved by the City Council.

Section 4 - Purchase Orders

~~I-2-4.01 – Purchases Over Five Thousand Dollars ($5,000) Must Be in Writing~~
~~No~~I-2-4.01 – Purchase Order Requirement.

Except as otherwise approved by the Purchasing Agent or pursuant to Section I-2-2.03, no contract award for supplies or services ~~or the disposal of City property where the total expenditure or value is over Five Thousand Dollars ($5,000)~~ shall be deemed to be an ~~acceptance of any offer or bid unless and until the same is reduced to writing and signed by the Purchasing Agent and dispatched~~authorization to ~~the vendor or purchaser. It is a violation of the ordinance to divide the purchase of~~ proceed with provision of the supplies or ~~general~~ services ~~or the disposal of City property in an amount over Five Thousand Dollars ($5,000) into smaller orders for the purpose of evading the~~ until a purchase order ~~requirements of this section~~is appropriately authorized and issued.

I-2-4.02 ~~– Preparation~~ – Issuance of Purchase Orders.

Upon ascertaining the price to be paid for supplies or services, the Purchasing Agent shall ~~prepare~~issue a purchase order. The Purchasing Agent shall forward the original purchase order to the vendor, retaining one (1) copy for his purchase order file. He shall likewise forward one (1) copy of the purchase order to the requesting department to be used as a receiving report.

I-2-4.03 - Sufficient Funds Must be Available~~-~~.

No purchase order shall be issued until it has been ascertained that there is to the credit of the requesting department a sufficient unencumbered appropriated balance in excess of all unpaid obligations to defray the amount of such order.

~~I-2-4.04 – Exceptions to Purchase Orders~~

~~Payments for annual maintenance, upgrades or subscriptions for computer hardware and/or software that has already been purchased pursuant to this chapter shall not require a purchase order for the payment to be issued.~~

Section 5 - Receipt of Goods and Services

I-2-5.01 - Department Head Responsible for Checking Quality and Contract Management.

Upon receipt by any Department of supplies or services, the Department head or designee, shall be responsible for the making of a careful check of the quality, condition, and quantity of goods received against a copy of the purchase order and the packing list, when applicable, or services rendered as specified in the contract.

I-2-5.02 - Department Head Responsible for Checking Invoice.

The Department head or designee, upon receipt of a vendor's invoice, shall check the invoice for correctness of quantities, unit prices, price extensions, discounts, transportation, allowances, ~~etc.~~services rendered, hourly rates etc. When applicable, the Department head or designee shall compare the same with the purchase order and packing list. Approved invoices shall be forwarded to Accounts Payable for payment processing.

Section 6 - Inspections

I-2-6.01 - Department Head's Inspection.

The Department head or designee shall inspect, or cause to be inspected, all deliveries of supplies or services to determine their conformance to specifications. The Department head or designee shall have the authority to require chemical, physical, or other tests of samples ~~submitted with bids and samples~~ of deliveries which are necessary to determine quality and conformance to the specifications. In the performance of such tests, the Department head or designee shall have the authority to make use of laboratory facilities of any department of the City or any outside laboratory at the vendor's expense.

Section 7 - ~~Storing of Materials~~

~~I-2-7.01 - Storerooms and Warehouses~~

~~The Purchasing Agent shall control and supervise the Purchasing warehouses of the City of Milpitas. The Purchasing Agent shall be responsible and accountable for all supplies in his or her custody and shall maintain a suitable inventory record thereof. (Ord. 23.10 (part), 1/3/06)~~

~~Section 8 –~~Disposal of City Property

I-2-~~8~~7.01 - Disposal of Property with an Estimated Value of Five Thousand Dollars ($5,000) or Less.

Except as otherwise provided by State law or City ordinance, the Purchasing Agent or designee shall be empowered to dispose of property of the City, including abandoned property, which cannot be used by any department of the City, at public or private sale or by renting or destroying the same, (all with or without notice, competitive bid or necessity of posting bid bonds, at the Purchasing ~~Agent's~~Agent or designee's discretion, and upon such terms as he or she deems best) provided any single item of property involved does not exceed Five Thousand Dollars ($5,000) in estimated current market value.

I-2-~~8~~7.02 ~~–~~ Deposit.

The Purchasing Agent or designee may, in his or her discretion, require that a deposit in the amount of the bid or any fraction thereof accompany each bid upon the disposal of City property.

I-2-~~8~~7.03 - Disposal of Property with an Estimated Value of More Than Five Thousand Dollars $5,000.

In the event that the estimated value of any single item of property exceeds Five Thousand Dollars ($5,000) in current market value, the City Council may, upon notice, empower the Purchasing Agent to dispose of it (in accordance with the same terms and conditions and subject to the same discretion and limitations as if it were estimated at Five Thousand Dollars ($5,000) or less in value). Alternatively, the City Council may elect to sell, rent or destroy the same in accordance with whatever provisions, terms and conditions the City Council may elect.

I-2-~~8~~7.04 - Retired K-9 Units and Firearms.

~~Council finds that retired police dogs of the Police Department's K-9 unit have no value to the City of Milpitas and are a financial liability and detriment. Accordingly, said police dogs may be returned to the original supplier, the animal's handler or former handler without compensation. This subsection constitutes an exception to this Section.~~

Notwithstanding the other provisions of this Chapter, the City Manager or designee is authorized to determine the disposition of:

(a) police service dogs including:

(1) sale or donation of the police service dog to the assigned police officer when the officer leaves the canine unit or if the police service dog can no longer perform its required duties;

(2) the original supplier; or

(3) any other method that best serves the interests of the City; and

(b) surplus firearms including:

(1) sale or donation to a law enforcement agency;

(2) sale to an authorized firearms retailer;

(3) sale or donation to an active or retired sworn member of the police department consistent with the Memorandum of Understanding between the City and the Milpitas Police Officers Association; or

(4) destruction if no safe alternative is available.

Section ~~9~~8 – Claims

I-2-~~9~~8.01 - Filing of Claims.

Claims for loss, damage, breakage, shortage or otherwise, claims for refund, claims for adjustment, and claims for insurance or other indemnity shall be made promptly by the Purchasing Agent.

Section ~~10~~9 - Ethics in Public Purchasing

I-2-~~10~~9.01 - Ethics in Public Purchasing.

Every employee participating in the procurement, management, storage, and use of supplies or services purchased by the City for its benefit shall adhere to the following principles:

(1) City employees shall not obligate the City, financially or otherwise, by any means, including, but not limited to, purchase orders and contracts, when the employee has a personal, material, financial, or other interest in the obligation.

(2) City employees shall not accept any form of gratuities.

(3) City employees may not accept discounts, reward points, sales, reduced prices, or other benefits offered for personal purchases by suppliers because of employee's relationship with the City.

(4) City employees shall be personally liable for any unauthorized procurements.

Section ~~11~~10 - Severability

I-2-~~11~~10.01 - Severability.

If any provisions of this C~~c~~hapter or any application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of this C~~c~~hapter that can be given effect without the invalid provisions or application, and to this end, the provisions of this C~~c~~hapter are declared to be severable.

Section ~~12~~11 - Exclusions from Chapter

I-2-~~12~~11.01 - Exclusions from Chapter.

The provisions of this Chapter shall not apply to items that typically cannot be bid or that the City Council has chosen to exclude from bidding. The following list is exemplary of these types of items and/or services~~,~~ but is not intended to be all inclusive.

~~12.01-1 To public projects (separately governed by the provisions of the California Public Contract Code);~~

~~12.01-2~~11.01-1 To franchises governed by the provisions of the California Public Utilities Code or other statute of the State of California;

~~12~~11.01-~~3~~2 Where State or Federal law requires a different procedure;

~~12~~11.01-~~4~~3 To franchises, rights, privileges, licenses and permits granted by the City of Milpitas (including, but not limited to, franchises, rights and privileges granted for refuse disposal under Title V, Chapter 200 of the Milpitas Municipal Code and the Cable Franchise under Title III, Chapter 22 of the Milpitas Municipal Code;

~~12~~11.01-4 To the purchase of insurance;

11.01-5 To the purchase of ~~insurance~~art;

~~12~~11.01-6 To the ~~purchase of art;~~
~~12.01-7 To the~~ leasing, purchase or sale of land or any interest therein;

~~12~~11.01-~~8~~7 To the hiring of or contracting for personnel (whether as temporary, seasonal or permanent employees, agents or independent contractors);

~~12~~11.01-~~9~~8 To the purchase of utilities, including, but not limited to telephone service, gas, electricity or water;

~~12~~11.01-~~10~~9 To the purchase of securities for the City's investment portfolio subject to the City's investment policy.

~~12~~11.01-~~11~~10 To the payments of debt service and bond indebtedness; arbitrage compliance; refunds of deposits; payments and/or pass through of collections on behalf of other governmental agencies; budget approved memberships and dues; authorized Community Development Block Grants (CDBG); memorandum of understanding obligations; budget approved contributions to not-for-profit organizations; United States Postal Service postage; City Council approved ~~recreation grants~~grant programs; employee travel expenses.

SECTION 4. EFFECTIVE DATE AND POSTING

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

PLEASE NOTE:

This copy of Ordinance No. 23.15 is a “redlined” version for your convenience. Text additions are designated by an underline and text deletions are designated with a strikethrough.

REGULAR

NUMBER: **23.15**

TITLE: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTERS 2 (PURCHASING) AND 310 (OPEN GOVERNMENT ORDINANCE) OF TITLE I (ADMINISTRATION) OF THE MILPITAS MUNICIPAL CODE RELATING TO PURCHASING**

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Rich Tran, Mayor

APPROVED AS TO FORM:

_____
Christopher J. Diaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the City's Purchasing Division in the Finance Department supports all City Departments to procure and contract for goods and services while ensuring fair and open competition consistent with the Municipal Code; and

WHEREAS, the City studied its procurement function including process mapping to streamline procurement processes and reducing administrative costs while ensuring competitive pricing; and

WHEREAS, on March 16, 2020, the County of Santa Clara ordered residents to shelter-in-place ("Shelter-In-Place Order") in response to the COVID-19 pandemic; and

WHEREAS, the Shelter-in-Place Order accelerated the streamlining of operations through online approval of contracts using DocuSign, implementation of the contract management database for contracts originating from the Purchasing Division including automatic notification for renewal of contracts and insurance, and online payment for Procurement Card (P-Card) purchases; and

WHEREAS, further streamlining while ensuring fair and open competition and competitive pricing is dependent on updating the Purchasing Ordinance; and

WHEREAS, on September 1, 2020, the City Council approved the COVID-19 Fiscal Response Strategies and Guidelines; and

WHEREAS, the City Manager was directed to follow these fiscal strategies and guidelines to ensure an effective response to the economic crisis and related impact on the City's finances caused by COVID-19, while minimizing service cuts to our community; and

WHEREAS, one of these fiscal strategies and guidelines directs the City Manager to identify and bring forward for Council consideration City policy and ordinance changes, as applicable, that would enable/facilitate service delivery improvements; and

WHEREAS, the primary recommended changes to the City's Purchasing Ordinance include updating procurement methods and procedures, increasing bidding thresholds and related contract amendment authority, establishing annual reporting requirements and deadlines for sole source purchases and standardization of equipment, changing definitions, and aligning the Purchasing Ordinance with existing practices.

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

SECTION 1. RECORD AND BASIS FOR ACTION

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

SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE I, CHAPTER 310

Title I (Administration), Chapter 310 (Open Government Ordinance), Section 3.70 (Public Information that Must be Disclosed) of the Milpitas Municipal Code is hereby amended to read as follows:

I-310-3.70 - Public Information that Must be Disclosed

Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

(a) Drafts and Memoranda. No preliminary draft or memorandum shall be exempt from disclosure under Government Code section 6254, subdivision (a) if it is normally kept on file. Preliminary drafts and memoranda concerning contracts, memoranda of understanding, or other matters subject to negotiation or pending Council approval shall not be subject to disclosure to this provision until final action has been taken.

(b) Litigation Material.

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this chapter:

(i) A pre-litigation claim against the City;

(ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;

(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any Milpitas governmental ethics code, or this Chapter.

(2) Unless otherwise privileged under California law, when litigation is adjudicated or otherwise settled, records of all communications between the department and the adverse party shall be subject to disclosure, including the text and terms of any settlement.

(c) Contracts, Bids and Proposals.

(1) All initial City Requests for Proposals ("RFP's") shall be kept in a central repository and shall be made available for public inspection. In addition, RFP's shall be placed on the City's website for a period from the date the RFP was issued to the date that the RFP is due.

(2) Contracts, contractors' bids, responses to requests for proposals and all other records of communication between the department and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit. All bidders and contractors shall be advised that information provided which is covered by this subdivision will be made available to the public upon request. Immediately after any review or evaluation or rating of responses to an RFP has been completed, evaluation forms and score sheets and any other documents used by persons in the RFP evaluation or contractor selection process shall be available for public inspection. The names of scorers, graders or evaluators, along with their individual ratings, comments, and score sheets or comments on related documents, shall be made immediately available after the review or evaluation of an RFP has been completed.

(3) During the course of negotiations for:

(i) Personal, professional, or other contractual services not subject to a competitive process or where such a process has arrived at a stage where there is only one qualified or responsive bidder;

(ii) Leases or permits having total anticipated revenue or expense to the City;

(iii) Any franchise agreements, all documents exchanged and related to the position of the parties, including draft contracts, shall be made available for public inspection and copying upon request. In the event that no records are prepared or exchanged during negotiations in the above-mentioned categories, or the records exchanged do not provide a meaningful representation of the respective positions, the City Attorney or city representative familiar with the negotiations shall, upon a written request by a member of the public, prepare written summaries of the respective positions within five (5) working days following the final day of negotiation of any given week. The summaries will be available for public inspection and copying. Upon completion of negotiations, the executed contract, including the dollar amount of said contract, shall be made available for inspection and copying.

(d) Budgets and Other Financial Information. Budgets, whether tentative, proposed or adopted, for the City or any of its departments, programs, projects or other categories, and all bills, claims, invoices, vouchers or other records of payment obligations as well as records of actual disbursements showing the amount paid, the payee and the purpose for which payment is made, other than payments for social or other services whose records are confidential by law, shall not be exempt from disclosure under any circumstances.

(e) Appraisals, offers and counteroffers relating to the City's purchase of real property are exempt until an agreement is executed. If an agreement for purchase is not submitted to the Council for approval then this exemption expires 1 year after negotiations are terminated.

(f) Neither the City nor any officer, employee, or agent thereof may assert an exemption for withholding for any document or information based on a "deliberative process" exemption, either as provided by California Public Records Act Section 6255 or any other provision of law that does not prohibit disclosure.

SECTION 3. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE I, CHAPTER 2

Title I (Administration), Chapter 2 (Purchasing) of the Milpitas Municipal Code is hereby amended to read as follows:

Chapter 2 - PURCHASING

Sections:

Section 1 - Purpose and Application: Definitions

I-2-1.01 - Purpose

The purpose of this Purchasing Ordinance is to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.

I-2-1.02 - Application

Except as otherwise provided herein, this Chapter applies to contracts for the procurement of supplies and services entered into by the City. When the procurement involves the expenditure of federal assistance, contract, or grant funds, the procurement shall be conducted in accordance with mandatory applicable federal law and regulations. Nothing in this Chapter shall prevent the City and any City affiliated agency from complying with the terms and conditions of any grant, gift or bequest that is otherwise consistent with law.

I-2-1.03 - Definitions

The words defined in this section shall have the meanings set forth below whenever they appear in the Purchasing Ordinance, unless the context in which they are used clearly requires a different meaning; or, a different definition is prescribed for a particular section or provision.

1. BIDDER. Any person who submits a response to a competitive City solicitation.
2. BUSINESS. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
3. CITY. The City of Milpitas and City affiliated agency.
4. CONTRACT. All types of City contracts, agreements, or purchase orders with the exception of public works contracts, for the procurement of supplies and services or the disposal of surplus supplies.
5. CONTRACT MODIFICATION. Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract.
6. CONTRACTOR. Any person having a contract with the City.
7. DATA. Any recorded information, regardless of form or characteristic.
8. ELECTRONIC. Any electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.
9. ELIGIBLE LOCAL PROVIDER. Any local provider who is an otherwise responsible bidder and otherwise responsive to a City's competitive solicitation.

10. ENVIRONMENTALLY PREFERABLE PRODUCTS OR MATERIALS. Any products or materials contained in the products that have a reduced negative effect on human health and the environment when compared with competing products that serve the same purpose. This comparison may consider raw materials' acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance or disposal of the product.
11. GENERAL SERVICES. The furnishing of goods and services by a vendor that does not typically require a license, certification or other professional criteria to perform the work. This includes services such as equipment maintenance, janitorial, printing, landscaping and refuse disposal.
12. GRANT. Any furnishing of funds by an outside agency or other organization to support a program authorized by law.
13. LOCAL PROVIDER. A supplier or provider of equipment, materials, supplies or services which has an established place of business within the City of Milpitas, which has a City of Milpitas business license, which has paid all currently due business license fees and taxes, and which began doing business within the City of Milpitas at least one (1) year prior to the City's inviting bids or quotations for the respective purchase.
14. PERSON. Any business, individual, union, committee, club, other organization, or group of individuals.
15. POST-CONSUMER MATERIAL OR PRODUCT. Any material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item, including any waste material and by-products which have been recovered or diverted from solid waste.
16. PROCUREMENT. The buying, purchasing, renting, leasing, or otherwise acquiring of any supplies or services. It also includes all functions that pertain to the obtaining of any supply or service, including description of requirements, selection, and solicitation of sources, preparation and award of contract and contract administration.
17. PROFESSIONAL SERVICES. Services, generally of an intangible nature that typically require a license, certification, and/or other professional criteria to perform the work as defined by the laws of the State of California including, but not limited to, Architect, Engineer, Land Surveyor, Attorney, Public Accountant as well as information technology services such as installation and implementation of information technology projects, software licensing and maintenance, and Software as a Service (SaaS).
18. PROVIDER. The terms bidder, supplier, contractor, vendor or provider, may be used interchangeably and shall refer to the person, company, or corporation from whom the City of Milpitas purchases supplies or services or with whom the City enters into a contract.
19. PUBLIC AGENCY. A public agency is defined as any school district, City, state, federal agency, U.S. Communities program or other nonprofit association or group consisting of governmental entities.
20. PUBLIC NOTICE. The distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods shall often include, but are not limited to, publication in newspapers of general circulation, posting in public places, electronic or paper notices to prospective bidders, and posting on web pages designated by the City for that purpose.
21. PUBLIC WORKS CONTRACT. Any City contract for the performance of a "public project" as defined in Public Contract Code section 22002, as it may be amended from time to time.
22. PURCHASING AGENT. The Purchasing Agent, the Director of Finance or his or her designee, or such position designated by the City Manager to administer this Chapter.
23. REQUESTING DEPARTMENT. Any organizational unit of the City of Milpitas that utilizes any supplies or services procured under this Ordinance.
24. RESPONSE. means a bid, proposal, quote, statement of qualification or other communication offered in response to a competitive City solicitation.
25. RESPONSIBLE BIDDER. A bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the work.
26. RESPONSIVE BIDDER. A bidder who has complied with the instructions and requirements established by the City and set forth in the City’s solicitation documents.
27. SIGNATURE. Shall be defined as a manual signature affixed in ink or provided through other acceptable means established by law. A faxed or scanned signature is acceptable.
28. SPECIFICATION. Any description of the physical or functional characteristics or of the nature of a supply or service. It may include a description of any requirement for inspecting, testing, or preparing a supply or service for delivery.

29. SOLICITATION. An invitation for bids or request for proposals, qualifications, quotes, or other document including all documents, whether attached or incorporated by reference, utilized in furtherance of a City procurement of goods or services.
30. SUPPLIES. All property (including, but not limited to, equipment, goods and materials) except as otherwise provided herein.
31. SURPLUS SUPPLIES. Supplies which are worn out, obsolete or unsuitable for City use.
32. WRITING OR IN WRITING. The product of any method of forming characters on paper, or other materials, or viewable screens, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.

Section 2 - Division of Purchasing

I-2-2.01 - Establishment

There is hereby established for the City a Division of Purchasing, headed by a Purchasing Agent, who shall report to the Director of the Finance Department.

I-2-2.02 - Responsibilities

In accordance with this Chapter, the Purchasing Agent shall:

1. Procure or supervise the procurement of all supplies and services needed by the City, except as otherwise provided herein;
2. Award contracts for Fifty Thousand Dollars ($50,000) or less;
3. Amend contracts or purchase orders awarded for amounts of Fifty Thousand Dollars ($50,000) or less as necessary, as long as the total amount of the amended contract does not exceed Fifty Thousand Dollars ($50,000).
4. Sell, trade or otherwise dispose of surplus supplies belonging to the City;
5. Establish and maintain programs for specification development, contract administration and inspection and acceptance, in cooperation with the departments using the supplies and services;
6. Provide ongoing training and support to the City departments pertaining to procurement of supplies or services;
7. Administer contracts with vendors for the purchase of citywide services and supplies such as paper, office supplies, janitorial services and office equipment;
8. Establish and maintain a central vendor database categorized by goods and services;
9. Provide management of the Procurement Card and Single Merchant Credit Card Programs;
10. Adopt operational procedures relating to the execution of any of the above duties and responsibilities.

I-2-2.03 - Purchases made by Departments

Each Department has the authority to purchase supplies, materials, equipment and services not to exceed Ten Thousand Dollars ($10,000) or less. For supplies, materials, and equipment, the department shall use a Procurement Card or submit a Purchase Requisition to Finance for issuance of a Purchase Order. For services with a value greater than One Thousand Dollars ($1,000), the department shall submit a Purchase Requisition to Finance for issuance of a contract and ensure compliance with insurance requirements as promulgated by the Risk Manager.

I-2-2.04 - Delegation

The Purchasing Agent may delegate authority to purchase supplies, or services, and to dispose of surplus supplies, to other City officials, if such delegation is deemed necessary for the effective procurement or disposal of those items.

Section 3 - Procurement Methods and Procedures

I-2-3.01 – Selection of Solicitation Method

The City shall where practicable engage in competitive procurement. The Purchasing Agent shall use the following solicitation methods under the circumstances described below:

(a) Purchases which are estimated not to exceed ten thousand dollars may be made without a competitive procurement method.
(b) Request for quotes process shall be used for purchases with an estimated value of more than ten thousand dollars and no more than fifty thousand dollars.
(c) Request for proposals process shall be used for purchases of services with an estimated value of more than fifty thousand dollars and for supplies, materials and equipment when the Purchasing Agent determines that it is in the best interest of the City to do so.
(d) Request for qualifications process may only be used for purchases of professional services with an estimated value of more than fifty thousand dollars.
(e) Formal bidding process shall be used for purchases of supplies, materials and equipment with an estimated value of more than fifty thousand dollars or for services when the Purchasing Agent determines that it is in the best interest of the City to do so.

I-2-3.02 - Split Orders

It is a violation of the Ordinance to divide the purchase of supplies or general services into smaller orders for the purpose of evading the competitive solicitation requirements of this Chapter.

I-2-3.03 - Procurements where competitive methods are not practicable

The City is not required to engage in competitive procurement under the following circumstances:

(a) Emergency authority of Purchasing Agent pursuant to Section I-2-3.04
(b) Public agency purchases pursuant to Section I-2-3.05
(c) Sole source procurements pursuant to Section I-2-3.06
(d) As authorized by the City Council to be in the best interest of the City

I-2-3.04 - Emergency Authority of Purchasing Agent

3.04-1 Precluding action by the City Council, the Purchasing Agent may authorize emergency purchases without observing the bidding procedures set forth in this Chapter upon a finding that such purchases are required to prevent or mitigate the loss or impairment of life, health, property, or essential public services and that there is sudden, unexpected occurrence that poses a clear and imminent danger. The Purchasing Agent may purchase supplies or services, even though the amount thereof may exceed Fifty Thousand Dollars ($50,000), without competitive bids upon notice.

3.04-2 Not later than seven (7) days after the emergency action, or at the next succeeding City Council meeting if that meeting will occur not later than 14 days after the action, the Purchasing Agent shall submit to the City Council a written statement of the circumstances of such emergency purchase over Fifty Thousand Dollars ($50,000), a description of the supplies or services purchased, and the prices thereof.

3.04-3 The City Council shall continue to review the emergency action at every subsequent regularly scheduled meeting thereafter until the action is terminated, to determine, by a four-fifths vote, that there is a need to continue the action, unless the Purchasing Agent has terminated the action prior to the City Council reviewing the emergency action.

I-2-3.05 – Public Agency Purchases

The Purchasing Agent may without observing the competitive procurement requirements prescribed by this Chapter:

(a) Purchase or acquire any supplies, materials or equipment or services from any public or governmental body or agency; or

(b) Joint purchasing agreements entered into by the City and one or more public agencies wherein the City is included as a potential purchaser under a competitive procurement process engaged in pursuant to the joint agreement; or
(c) The Purchasing Agent may arrange for the City to enter into purchase contracts with a supplier or contractor for the purchase of supplies or general services, the pricing and terms of which have been previously established by another public agency or improved pricing and terms, provided that the Purchasing Agent determines that such purchase contracts are in the City's best interest; or
(d) The Purchasing Agent may purchase supplies and services without complying with the quotation or bidding requirements of this Chapter, if such purchases are based on an agreement or entered into by any public agency or cooperative purchasing program utilizing public agency procurements as the basis for contracts offered, regardless of whether the City is a named party to the agreement or an actual participant in such a program, provided that:
   i. The underlying purchase was made using competitive negotiation or procurement procedures, and may include a nationally bid cooperative contract; and
   ii. The public agency is a "public agency" as defined in Government Code section 6500.

I-2-3.06 - Sole Source Procurement

A contract may be awarded without competition when the Purchasing Agent determines in writing, after conducting a good faith review of available sources, that only one viable source exists for the required supplies, material, equipment, or general service, or that there is a compelling reason for using only one source. The Purchasing Agent shall conduct negotiations, as appropriate, as to price, delivery and terms. A written statement of the basis for the sole source determination and the period of the sole source approval shall be placed in the contract file.

Not later than August 31st annually, the Purchasing Agent shall provide to the City Council a list of all sole source contracts entered into or renewed during the past fiscal year including the name of the department, description of the product or general service, vendor, and dollar amount.

I-2-3.07 – Request for Quotes (RFQ) Procedure

(a) The Purchasing Agent shall issue a Request for Quotes indicating the basis of award through the City's e-procurement system and vendors known to be able to provide the supplies and services and base the award of the contract, whenever possible, on at least three (3) quotations.
(b) Responses must be in writing as instructed in the Request for Quotes.
(c) If no responsive quote is received after issuance of a Request for Quotes, the Purchasing Agent may proceed to purchase the supplies, hire or have services performed in the open market provided that negotiations are conducted as appropriate as to price, terms and conditions of contract award.

I-2-3.08 - Formal Bid Procedures

(a) A notice of invitation for bid shall include a general description of the supplies, equipment or services to be purchased, state where the bid forms and specifications may be secured and state the final deadline and method for submitting bids. Notice shall be given as provided in Section I-2-3.10.
(b) Bidders shall submit electronic bids through the City's eProcurement System per the instructions in the bid documents. Any bid may be withdrawn by a written request signed by the bidder and received by the Purchasing Agent prior to the final time and date for the receipt of bids.
(c) Bids shall be opened at the time and date indicated in the bid document. A tabulation of all bids received shall be delivered to all registered bidders via the eProcurement System within 72 business hours after the bid opening. A tabulation of all bids received shall be made available on the City's eProcurement System or website for a period of not less than 30 calendar days after the award of the bid.
(d) The Purchasing Agent or City Council shall have the discretion to reject any and all bids presented and re-advertise for bids.
(e) The bid shall be awarded to the lowest responsive and responsible bidder.

(f) If no responsive bid is received after soliciting bids under this section, the Purchasing Agent may proceed to purchase the supplies, hire, or have services performed in the open market provided that negotiations are conducted as appropriate as to price, terms and conditions of contract award.

I-2-3.09 - Request for Proposals (RFP) Procedure

3.09-1 The Purchasing Agent shall be authorized to utilize the request for proposal method for purchase of supplies or services upon a determination by the Purchasing Agent that the use of competitive bidding is not practical or advantageous to the City because of one (1) or more of the following considerations:

(a) Price is not a primary consideration;
(b) The ability of the bidder to perform the contract or provide the service promptly, or within the time specified, without delay or interference;
(c) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
(d) The quality of performance of previous contracts or services;
(e) Quality, availability, or capability is overriding in relation to price in procurement of research, development, technical supplies or services;
(f) Delivery and installation, post-sale service or maintenance, reliability, warranties or availability of replacements, are overriding in relation to price or need to be evaluated in relation to prices;
(g) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
(h) The need to evaluate the utilization of a fixed-price or cost-type contract;
(i) The need to evaluate whether the marketplace will respond better to a solicitation permitting a range of alternative proposals or evaluation and discussions of them before entering the contract;
(j) The number and scope of conditions attached to the Solicitation.

3.09-2 Receipt of Proposals.

No proposals shall be handled so as to permit disclosure of the contents of any proposal to competing bidders during the process of negotiation. A register of proposals shall be prepared containing the name of each bidder. The register of proposals shall be open for public inspection only after contract award.

3.09-3 Evaluation Factors.

The request for proposals shall state evaluation factors, which shall be considered the primary basis for evaluating the proposals.

3.09-4 Discussion with Responsible Bidders and Revisions to Proposals.

Discussions may be conducted with responsible bidders who submit proposals determined to be reasonably possible of being selected for award, for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. All bidders shall be accorded equal treatment. Revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of the bidder or any information contained in competing offers.

3.09-5 Award.

Award shall be made to the responsible bidder whose proposal is determined in writing to be the most advantageous to the City, taking into consideration, price, value and the evaluation factors set forth in the request for proposals.

3.09-6 Rejection.

Without limitation to the applicability of any other provisions of this Chapter, the Purchasing Agent or City Council may reject any and all proposals.

I-2-3.10 - Request for Qualifications (RFQa) Procedure

3.10-1 The Purchasing Agent shall be authorized to utilize the request for qualification method for purchase of professional services upon a determination by the Purchasing Agent that the use of competitive bidding is not practical or advantageous to the City because of one (1) or more of the following considerations:

(a) Price is not part of the scoring criteria;
(b) For establishing a pool of qualified bidders;
(c) The ability of the bidder to provide the service promptly, or within the time specified, without delay or interference;
(d) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
(e) The quality of performance of previous services;
(f) Quality, availability, or capability is overriding in relation to price in procurement of research, development, technical services;
(g) The sufficiency of the financial resources and ability of the bidder to provide the service;
(h) The need to evaluate whether the marketplace will respond better to a solicitation permitting a range of alternative proposals or evaluation and discussions of them before entering the contract;
(j) The number and scope of conditions attached to the Solicitation.

3.10-2 Receipt of Statements of Qualifications.

No statements of qualifications ("SOQs") shall be handled so as to permit disclosure of the contents of any SOQs to competing bidders during the process of negotiation. A register of SOQs shall be prepared containing the name of each bidder. The register of SOQs shall be open for public inspection only after contract award.

3.10-3 Evaluation Factors.

The request for qualifications shall state evaluation factors, which shall be considered the primary basis for evaluating the SOQs.

3.10-4 Discussion with Responsible Bidders and Revisions to SOQs.

Discussions may be conducted with responsible bidders who submit SOQs determined to be reasonably possible of being selected for award, for the purpose of cost, clarification to assure full understanding of, and conformance to, the solicitation requirements. All bidders shall be accorded equal treatment. Revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of the bidder or any information contained in competing offers.

3.10-5 Award.

Award shall be made to the responsible bidder whose SOQ is determined in writing to be the most advantageous to the City, taking into consideration value and the evaluation factors set forth in the request for qualifications.

3.10-6 Rejection.

Without limitation to the applicability of any other provisions of this Chapter, the Purchasing Agent or City Council may reject any and all SOQs.

I-2-3.11 – Noticing of Solicitations for estimated Purchase of more than $50,000

For purchases with an estimated value of more than $50,000, where notice is required, notice shall be given by one or more of the following methods:

(1) Publishing notice in a newspaper of general circulation within the City on at least one occasion at least five days prior to the date set for the final receipt of bids. Provided, that publication may be made in any newspaper of general circulation in Santa Clara County which the Purchasing Agent shall select if the publication schedule of all newspapers of general circulation in the City are such that notice by publication cannot be given in time.
(2) Posting on the City of Milpitas website at least five days prior to the date set for the final receipt of bids.
(3) Through direct electronic notification via the City's eProcurement System.
(4) Any other manner of notice required by law for the particular goods or services to be purchased.

Nothing in this section shall prohibit the City from notifying prospective firms of solicitations by electronic means, and nothing in this section shall prohibit the City from notifying prospective firms who are not in the City's Vendor Database.

The notice shall include a general description of the goods or services to be purchased or City property to be disposed; date, time and place of bid opening; and whether bonds will be required. The notice shall also include such information as to the proposed purchase or disposal as the Purchasing Agent deems sufficient to comply with relevant State law, regulation or City ordinance.

I-2-3.12 – Use of "or equals" in specifications and testing of "equals"

(a) Any reference to a specific brand name followed by the term "or equal" in specifications is illustrative only. A reference to a brand name or equal describes a component best meeting the specific operational, design, performance, maintenance, quality, and reliability requirements of the City.
(b) A bidder may offer an equivalent ("or equal") in response to a brand name or equal reference. When an "or equal" is offered, the City may test and evaluate the product prior to award of the contract and the City determines if “an equal” offered meets the specification.
(c) At bidder's expense, bidder bears sole responsibility for providing any information, test data or document required by the City to fully evaluate the acceptability of the "or equal" at bidder's expense, this full evaluation may require independent testing, including destructive testing, at qualified test facilities.
(d) If the City rejects a response or part of a response containing any "or equal," the Purchasing Agent shall determine the decision in writing.

I-2-3.12 - Contracting for Consultants

3.12-1 Consultants are required for professional or technical expertise and for matters requiring specialized abilities or a high degree of skill. Their numbers (in relation to a particular skill or expertise required) are comparatively limited. Where consultants are involved, the bidding process is not likely to result in a lower price to the City or eliminate unnecessary expense or delay. However, the request for proposals (RFP) process established in I-2-3.08, the request for qualifications (RFQa) process established in I-2-3.09, or a similar process based on evaluating consultant qualifications, is better suited.

3.12-2 Architects, Engineers and Land Surveyors.

In addition to the provisions of paragraph 3.12-1 of this section, the following requirements shall be applicable to the selection of architects, engineers and land surveyors.

(a) The requesting department or division head shall negotiate a contract with the firm that possesses the demonstrated competence and professional qualifications for the required architectural, engineering and land-surveying services.
(b) Should the requesting department or division head be unable to negotiate a satisfactory contract with the firm considered to be competent and qualified, at a price determined to be fair and reasonable, negotiations with that firm shall be formally terminated. The requesting department or division head shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the requesting department or division head shall formally terminate negotiations. The requesting department or division head shall then undertake negotiations with the third most qualified firm.
(c) Should the requesting department or division head be unable to negotiate a satisfactory contract with any of the selected firms, the requesting department or division head shall select additional firms in order of their competence and qualifications and continue negotiation until an agreement is reached.

I-2-3.13 - Standardization

3.13-1 Where the Purchasing Agent has determined that it is required for the health, safety or welfare of the people or employees of the City, or that cost savings have been demonstrated, standardization of supplies,

materials or equipment, including information and communication technology products and services, for purchase or to be used in a public works project, shall be considered. The specifications may stipulate a single brand or trade name. Among the factors that may be considered in determining to standardize on a single brand or trade name are that:

(a) In order to acquire a specific product(s) for the purpose of conducting a field test or experiment to determine the product's suitability for use by the City.
(b) When it is required for proper operation or function to match other products with respect to the repair or expansion or completion of a system or program already in use by the City, including, but not limited to, technology purchases required to achieve interoperability with existing hardware, software, systems or programs.
(c) In order to achieve significant cost savings based upon consideration of the following cost factors:
    1. Timeliness and quality of installation, repair and maintenance;
    2. Quality of user training;
    3. Supplies and replacement parts;
    4. Modification of existing equipment, materials or systems;
    5. Future upgrades and updates;
    6. Estimated amount and cost of reasonably foreseeable future purchases of equipment that would be required to be compatible or functional with the product which is the subject of the standardization determination.
    7. Administrative costs.

3.13-2 The Purchasing Agent's written decision shall state the facts reviewed in arriving at the decision, the reasons for the decision, the period of time for which it is valid for making purchases and under what conditions it must be reviewed for possible revision. A copy of the Purchasing Agent's decision shall be attached to any report to the City council seeking approval of a purchase under this section.

3.13-3 Available Competition.

When there is more than one (1) source for the standardized supply or service, competitive procurement in accordance with Sections I-2-3.06, I-2-3.07 and I-2-3.08 is required.

3.13-4 Annual Report.

Not later than August 31st annually, the Purchasing Agent shall provide to the City Council a list of all standardizations approved during the past fiscal year including the product, manufacturer, and reasons for the standardization as authorized in this section.

I-2-3.14 - Local Purchasing Preference

3.14-1 Application of Local Preference.

The provisions of this section and the local preference established pursuant to this section shall be applicable to the following types of purchases or contracts executed in excess of Ten Thousand Dollars ($10,000) and pursuant to either a formal or an informal bid:

(a) Purchases or contracts for the purchase of supplies, materials and equipment; and
(b) Purchases or contracts for services that are not otherwise of the kind contemplated by Section I-2-3.11.

3.14-2 Exceptions to the Application of Local Preference.

The provisions of this section and the local preference established pursuant to this section shall not be applicable to the following types of purchases or contracts:

(a) Purchases or contracts for professional services of the kind contemplated by Section I-2-3.11;
(b) Public works contracts;
(c) Emergency purchases made pursuant to Section I-2-3.03;
(d) Sole source purchases made by the Purchasing Agent pursuant to Section I-2-3.05;
(e) Public Agency purchases made by the Purchasing Agent pursuant to Section I-2-3.04;

(f) Purchases or contracts where legal constraints on the expenditure of funds prohibit the application of the local preference or those contracts funded by the federal or state government, including federal or state grant funding, when such funding would be jeopardized by application of the local preference.

3.14-3 Reduction of Bid by Eligible Local Provider; Procedure for Applying the Local Preference.

In contracting for, supplies or services as specifically set forth in this section, the City shall grant preference to a local provider who submits a bid within ten percent (10%) of the lowest responsible bidder and who is otherwise responsive and responsible to the invitation for bids, which preference shall allow the local provider the opportunity to reduce its bid to an amount equal to the amount of the lowest responsible bid, if the lowest responsible bid is submitted by other than an Eligible Local Provider. In the event an Eligible Local Provider reduces its bid to the amount of the lowest responsible bid, the Eligible Local Provider shall be deemed to have provided the lowest responsible bid and shall be awarded the contract.

(a) The preference and opportunity to reduce the amount of the bid shall be provided first to the lowest Eligible Local Provider and, if not accepted by such Eligible Local Provider within five (5) business days of the opening of the bids, then to each successive Eligible Local Provider who is within ten percent (10%) of the lowest responsible bid, in ascending order of the amount of the bids.
(b) The local provider shall certify under penalty of perjury, as a part of its bid and in a form and manner as required by the City, that the bidder qualifies as a local provider. The preference established in this section shall be waived if the certification does not appear on the respective bid.

3.14-4 No Exemption from Local Sales Tax.

The application of a local preference as set forth in this section shall not exempt any Eligible Local Provider to which a contract is executed or awarded from having to pay all applicable federal, state or local sales tax.

I-2-3.15 - Recycled Product Procurement

3.15-1 The City of Milpitas is committed to the conservation and protection of state and local resources; therefore, bidders able to supply recycled products and products containing recycled and environmentally preferable materials that meet performance requirements are encouraged to offer them in bids and proposals. The Purchasing Agent shall purchase recycled products whenever they are available at the same total cost and the fitness and quality are equal to or better than that of non-recycled products.

(a) The City shall require contractors and consultants to use environmentally preferable products, and use products manufactured with the maximum practicable amount of post-consumer material, whenever cost effective and to the extent practicable.
(b) The City shall ensure that they and their contractors use both sides of paper sheets whenever practicable.
(c) To the extent possible, the recycled product preference cost shall apply to the bids where the City has made multiple awards, so as to maximize the dollar participation of firms offering recycled products.
(d) To the extent possible, all printing contracts made by the City shall specify that the paper used shall meet the recycled content requirement of thirty percent (30%) postconsumer fiber.
(e) The City may specify recycled content at levels higher than the minimum content standards.

3.15-2 Where the use of recycled products is designated, the Purchasing Agent shall:

(a) Maintain a list of designated recycled products that contain a practicable amount of recovered material and are consistent with State and Federal guidelines and coordinate with all departments to purchase environmentally preferable products whenever practicable.
(b) Where the contract is competitively solicited, grant the supplier of recycled products with a minimum of 10% recycled content in its product(s) a preference of ten percent (10%) based on the bid or price quoted by supplier of recycled products when determining the lowest responsive and responsible or highest ranked bidder depending upon procurement process used.
(b) Inform Departments of processes and procedures that are environmentally preferable in order to facilitate their evaluation and use by the Departments whenever practicable.
(c) Monitor contracting procedures to ensure that they do not discriminate against recycled products without justification, and that they maximize the specification of designated recycled products whenever practicable.

I-2-3.15 – Testing and Inspection of Samples

3.15-1 The Purchasing Agent may require vendors to provide samples to be tested and inspected as part of the applicable procurement process. The Purchasing Agent shall have the authority to require chemical, physical, or other tests of samples submitted with bids which are necessary to determine quality and conformance to the specifications. In the performance of such tests, the Purchasing Agent shall have the authority to make use of laboratory facilities of any department of the City or any outside laboratory at the bidder's expense.

I-2-3.16 - Waiver of Informalities: Rejection of Responses

Where the Purchasing Agent or City Council are required to make purchases upon competitive solicitations, said Purchasing Agent or City Council may waive any informalities or minor irregularities related to the procurement process, solicitation documents or responses or may reject any and all responses (anything herein contained to the contrary notwithstanding) if said Purchasing Agent or City Council deems said rejection to be in the best interests of the City. Said rejection shall be at the sole discretion of the Purchasing Agent or City Council, as the case may be. Upon rejection of responses, the Purchasing Agent or the City Council, as the case may be, may:

(1) Give subsequent notice for a new competitive solicitation;
(2) Postpone said purchase or disposal definitely or indefinitely; or
(3) Elect to make the purchase without competitive solicitation, upon notice (and as if a competitive solicitation, upon notice, had not been required in the first instance) in accordance with the authority granted by the various subsections of this section.

I-2-3.17 – Insurance and Bonds

(a) The Purchasing Agent is authorized to require vendors to provide insurance and surety bonds for contracts. Where required, the bidder shall submit insurance or surety bonds, or both, acceptable to the City.
(b) Where required by the Purchasing Agent, all responses to solicitations shall include such bidders' security as is required by the solicitation documents and shall be presented under sealed cover. If the successful bidder fails to execute the contract within the time specified in the notice inviting bids or in the specifications referred to therein, the bidders' security may be declared forfeited by the Purchasing Agent to the City, and any bonds so forfeited may be prosecuted and collected and the amount of the security paid into the general fund. Unsuccessful bidders shall be entitled to return of their bidders' security. The form and amount of such security shall be described in the notice inviting responses or in the specifications referred to therein.
(c) To secure faithful performance of the contract, the Purchasing Agent is authorized to require security in the form of cash, cashier's check, certified checks, or corporate faithful performance bonds, in such amount as the Purchasing Agent shall deem reasonably necessary to protect the best interests of the City. If the Purchasing Agent requires such security, the form and amount thereof shall be described in the notice inviting responses or in the specifications referred to therein. Unless otherwise required by law or the funding source, the Purchasing Agent need not require such security if the Purchasing Agent does not deem such to be reasonably necessary to protect the best interest of the City, or if the Purchasing Agent believes the interests of the City are best served by not requiring the same.

I-2-3.18 – Protest Procedure

3.18-1 Any interested party may file a protest to a proposed award of a contract in an amount over Ten Thousand Dollars ($10,000). The protest shall be filed with the Purchasing Agent in writing no later than seven (7) calendar days after the posting of the intent to award and shall set forth the basis for the protest and any proposed remedy.

3.21-2 The Purchasing Agent will review the protest as soon as possible and will provide a written response to the protestor. The Purchasing Agent's decision on a bid protest for a procurement in an amount no more than Fifty Thousand Dollars ($50,000) shall be final.

3.18-3 For procurements having a value of more than Fifty Thousand Dollars ($50,000), the City Council will consider the protest and take action thereupon, which action shall be final.

I-2-3.19 - Public Works Contract Purchasing Procedures

3.19-1 Definitions.

For the purposes of this Section I-2-3.19 the following words and phrases shall have the following meanings:

1. Act means the Uniform Public Construction Cost Accounting Act (California Public Contracts Code section 22000 et seq.).
2. Commission means the California Uniform Construction Cost Accounting Commission.
3. Facility means any plant, building, structure, ground facility, utility system, subject to the limitation of subsection 4 of the definition for public project below, real property, streets and highways, or other public works improvement.
4. Public project has the meaning assigned to it under Public Contract Code section 22002, as it may be amended from time to time.

3.19-2 Public Project Contracting Procedures.

The City shall follow the contracting procedures set forth in Article 3 of Act (Public Contract Code section 22030 et seq.). The City shall procure public projects by force account, negotiated contract, purchase order, informal bidding or formal bidding as required in accordance with the applicable dollar amount limitations under Section 22032 of the Act, as it may be amended from time to time.

3.19-3 Contractors List.

The Directors of Engineering and Public Works, in coordination with the City's Purchasing Agent, shall compile and maintain a list of qualified contractors identified according to categories of work. This list shall comply with the requirements of Section 22034 of the Act and the criteria promulgated, from time to time, by the Commission.

3.19-4 Informal Bidding - Notice.

(a) When a public project is to be performed which qualifies for informal bidding, notice of such project shall be given as follows unless an exception to competitive bidding applies:
    (1) Mailed notice shall be sent to all contractors on the contractors list for the category of work being bid; and
    (2) Mailed notice shall be given to all construction trade journals specified by the Commission for the receipt of such notice for Santa Clara County; and
    (3) Additional notice to other contractors and/or trade journals may, in the discretion of the City, be given.

(b) If the product or service to be acquired is proprietary in nature such that it can only be obtained from a certain contractor or contractors, notice inviting bids may be sent only to such contractor or contractors.

(c) All mailing of notices to contractors and construction trade journals shall be completed not less than ten days before bids are due.

(d) The notice shall describe the project in general terms, how to obtain more detailed information about the project and shall state the time and place for submission of bids.

3.19-5 Formal Bidding—Notice.

(a) When a public project is to be performed that requires formal bidding, notice of such project shall be given as follows unless an exception to competitive bidding applies:
    (1) The notice shall state the time and place for the receiving and opening of sealed bids and distinctly describe the project.

(2) The notice shall be published at least 14 calendar days before the date of opening the bids in a newspaper of general circulation, printed and published in the City; or, if there is no newspaper printed and published within the jurisdiction of the City, in a newspaper of general circulation which is circulated within the City.
(3) The notice inviting formal bids shall also be mailed to all construction trade journals specified by the Commission for the receipt of such notice for Santa Clara County. The notice shall be mailed at least 15 calendar days before the date of opening the bids.

3.19-6 Award of Contracts.

The City Manager is authorized to award contracts for public projects of less than or equal to one-hundred thousand dollars.

3.19-7 Rejection of Bids.

The City Manager or the City Council, as the case may be, may, in the Manager's or Council's discretion, reject all bids and proceed as authorized by the Act.

3.19-8 Approval of Plans and Designs.

The City Engineer, or designee, is authorized to approve plans and designs, and all amendments and addenda thereto, for performance of a public project of the City.

I-2-3.20 - Authority to Modify Contracts Awarded by City Council

The Purchasing Agent is authorized to enter into and execute for and on behalf of the City, without the prior approval of the City Council, any amendment or change order to a supply or service contract previously approved by the Council within the following guidelines:

(a) To extend the term of the contract, at the recommendation of the Requesting Department, for a period not to exceed twelve (12) consecutive months from the last Council-approved expiration date;
(b) To make minor revisions to the scope of services or schedule;
(c) To make clerical corrections; or
(d) The Purchasing Agent may also approve and sign assignments of contracts previously approved by the City Council when he or she has determined that the proposed assignee has the ability, capacity, experience and skill and is otherwise qualified to perform the contract.

All modifications to contracts, including, but not limited to, changes to the scope of the work, quantity of goods, price or term shall be made in writing and approved by the Requesting Department. Amendments or change orders are permitted only if the modification would not cause the contract to exceed the monetary limits defined below:

Contract Amount	Individual Change Order Authority	Cumulative Change Order Authority
Under $100,000	10% of Award or $10,000 whichever is less	15% of Award or $15,000 whichever is less
Over $100,000	10% of Award or $20,000 whichever is less	15% of Award or $40,000 whichever is less

All contract changes must be reflected on the Purchase Order and/or contract amendment. All other changes outside the parameters defined in this section must be approved by the City Council.

Section 4 - Purchase Orders

I-2-4.01 – Purchase Order Requirement.

Except as otherwise approved by the Purchasing Agent or pursuant to Section I-2-2.03, no contract award for supplies or services shall be deemed to be an authorization to proceed with provision of the supplies or services until a purchase order is appropriately authorized and issued.

I-2-4.02 – Issuance of Purchase Orders.

Upon ascertaining the price to be paid for supplies or services, the Purchasing Agent shall issue a purchase order. The Purchasing Agent shall forward the original purchase order to the vendor, retaining one (1) copy for his purchase order file. He shall likewise forward one (1) copy of the purchase order to the requesting department to be used as a receiving report.

I-2-4.03 - Sufficient Funds Must be Available.

No purchase order shall be issued until it has been ascertained that there is to the credit of the requesting department a sufficient unencumbered appropriated balance in excess of all unpaid obligations to defray the amount of such order.

Section 5 - Receipt of Goods and Services

I-2-5.01 - Department Head Responsible for Checking Quality and Contract Management.

Upon receipt by any Department of supplies or services, the Department head or designee, shall be responsible for the making of a careful check of the quality, condition, and quantity of goods received against a copy of the purchase order and the packing list, when applicable, or services rendered as specified in the contract.

I-2-5.02 - Department Head Responsible for Checking Invoice.

The Department head or designee, upon receipt of a vendor's invoice, shall check the invoice for correctness of quantities, unit prices, price extensions, discounts, transportation, allowances, services rendered, hourly rates etc. When applicable, the Department head or designee shall compare the same with the purchase order and packing list. Approved invoices shall be forwarded to Accounts Payable for payment processing.

Section 6 - Inspections

I-2-6.01 - Department Head's Inspection.

The Department head or designee shall inspect, or cause to be inspected, all deliveries of supplies or services to determine their conformance to specifications. The Department head or designee shall have the authority to require chemical, physical, or other tests of samples of deliveries which are necessary to determine quality and conformance to the specifications. In the performance of such tests, the Department head or designee shall have the authority to make use of laboratory facilities of any department of the City or any outside laboratory at the vendor’s expense.

Section 7 - Disposal of City Property

I-2-7.01 - Disposal of Property with an Estimated Value of Five Thousand Dollars ($5,000) or Less.

Except as otherwise provided by State law or City ordinance, the Purchasing Agent or designee shall be empowered to dispose of property of the City, including abandoned property, which cannot be used by any department of the City, at public or private sale or by renting or destroying the same, (all with or without notice, competitive bid or necessity of posting bid bonds, at the Purchasing Agent or designee's discretion, and upon such terms as he or she deems best) provided any single item of property involved does not exceed Five Thousand Dollars ($5,000) in estimated current market value.

I-2-7.02 – Deposit.

The Purchasing Agent or designee may, in his or her discretion, require that a deposit in the amount of the bid or any fraction thereof accompany each bid upon the disposal of City property.

I-2-7.03 - Disposal of Property with an Estimated Value of More Than Five Thousand Dollars $5,000.

In the event that the estimated value of any single item of property exceeds Five Thousand Dollars ($5,000) in current market value, the City Council may, upon notice, empower the Purchasing Agent to dispose of it (in accordance with the same terms and conditions and subject to the same discretion and limitations as if it were

estimated at Five Thousand Dollars ($5,000) or less in value). Alternatively, the City Council may elect to sell, rent or destroy the same in accordance with whatever provisions, terms and conditions the City Council may elect.

I-2-7.04 - Retired K-9 Units and Firearms.

Notwithstanding the other provisions of this Chapter, the City Manager or designee is authorized to determine the disposition of:

(a) police service dogs including:
  (1) sale or donation of the police service dog to the assigned police officer when the officer leaves the canine unit or if the police service dog can no longer perform its required duties;
  (2) the original supplier; or
  (3) any other method that best serves the interests of the City; and

(b) surplus firearms including:
  (1) sale or donation to a law enforcement agency;
  (2) sale to an authorized firearms retailer;
  (3) sale or donation to an active or retired sworn member of the police department consistent with the Memorandum of Understanding between the City and the Milpitas Police Officers Association; or
  (4) destruction if no safe alternative is available.

Section 8 – Claims

I-2-8.01 - Filing of Claims.

Claims for loss, damage, breakage, shortage or otherwise, claims for refund, claims for adjustment, and claims for insurance or other indemnity shall be made promptly by the Purchasing Agent.

Section 9 - Ethics in Public Purchasing

I-2-9.01 - Ethics in Public Purchasing.

Every employee participating in the procurement, management, storage, and use of supplies or services purchased by the City for its benefit shall adhere to the following principles:

(1) City employees shall not obligate the City, financially or otherwise, by any means, including, but not limited to, purchase orders and contracts, when the employee has a personal, material, financial, or other interest in the obligation.
(2) City employees shall not accept any form of gratuities.
(3) City employees may not accept discounts, reward points, sales, reduced prices, or other benefits offered for personal purchases by suppliers because of employee's relationship with the City.
(4) City employees shall be personally liable for any unauthorized procurements.

Section 10 - Severability

I-2-10.01 – Severability.

If any provisions of this Chapter or any application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of this Chapter that can be given effect without the invalid provisions or application, and to this end, the provisions of this Chapter are declared to be severable.

Section 11 - Exclusions from Chapter

I-2-11.01 - Exclusions from Chapter.

The provisions of this Chapter shall not apply to items that typically cannot be bid or that the City Council has chosen to exclude from bidding. The following list is exemplary of these types of items and/or services but is not intended to be all inclusive.

11.01-1 To franchises governed by the provisions of the California Public Utilities Code or other statute of the State of California;

11.01-2 Where State or Federal law requires a different procedure;

11.01-3 To franchises, rights, privileges, licenses and permits granted by the City of Milpitas (including, but not limited to, franchises, rights and privileges granted for refuse disposal under Title V, Chapter 200 of the Milpitas Municipal Code and the Cable Franchise under Title III, Chapter 22 of the Milpitas Municipal Code;

11.01-4 To the purchase of insurance;

11.01-5 To the purchase of art;

11.01-6 To the leasing, purchase or sale of land or any interest therein;

11.01-7 To the hiring of or contracting for personnel (whether as temporary, seasonal or permanent employees, agents or independent contractors);

11.01-8 To the purchase of utilities, including, but not limited to telephone service, gas, electricity or water;

11.01-9 To the purchase of securities for the City's investment portfolio subject to the City's investment policy.

11.01-10 To the payments of debt service and bond indebtedness; arbitrage compliance; refunds of deposits; payments and/or pass through of collections on behalf of other governmental agencies; budget approved memberships and dues; authorized Community Development Block Grants (CDBG); memorandum of understanding obligations; budget approved contributions to not-for-profit organizations; United States Postal Service postage; City Council approved grant programs; employee travel expenses.

SECTION 4. EFFECTIVE DATE AND POSTING

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

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Introduce Ordinance No. 65.150 Regarding Responsible Construction**
Category:	Leadership and Support Services
Meeting Date:	10/6/2020
Staff Contact:	**Christopher J. Diaz, City Attorney 408-586-3040** **Steve McHarris, City Manager 408-586-3059**
Recommendation:	Following the reading of the title by the City Attorney, move to waive the first reading beyond the title and Introduce Ordinance No. 65.150 adding Chapter 32 (Responsible Construction) to Title III of the Milpitas Municipal Code.

Background:
At the August 4, 2020, City Council meeting, the City Council unanimously agreed to direct staff to return with a draft Responsible Construction Ordinance as requested by Mayor Rich Tran and Councilmember Anthony Phan. In general, the draft Responsible Construction Ordinance would impose certain provisions requiring private developers receiving financial assistance from the City involved in construction, alteration, and/or demolition work within the City, valued in excess of $500,000, to file disclosure forms with the City confirming their contractors and subcontractors have no unpaid wage theft or other judgments or outstanding violations. It also requires that if any unpaid wage theft violations develop during the course of the project, the private developer ensure the payment of any unpaid wage theft violation by their contractor or subcontractor as further detailed below.

Analysis:
The Responsible Construction Ordinance would impose on any "Covered Party," as defined in the Ordinance to include any private developer or building permit holder receiving financial assistance from the City (with the exception of any owner working on their own residence), the requirement that it ensure that any contractor or subcontractor performing work in excess of $500,000 on a "Major Construction Project," as defined in the Ordinance, disclose:

- any wage theft violations in the five years prior;
- any citations or penalties imposed by the U.S. Department of Labor, the California Department of Industrial Relations, the California Labor Commissioner's Office, or the California Division of Occupational Safety and Health in the five years prior;
- any cause findings by the California Department of Fair Employment and Housing or the U.S. Equal Employment Opportunity Commission for the laws enforced by those agencies during the five years prior;
- any liability for failing to maintain worker's compensation insurance, or any fraudulent activity related to worker's compensation insurance, in the five years prior;
- any liability for retaliating or discriminating against a worker for making a complaint about a violation of laws enforced by the U.S. Department of Labor, the California Department of Industrial Relations, the California Department of Fair Employment and Housing, or the U.S. Equal Employment Opportunity Commission during the five years prior;
- any liability for failing to pay any payroll taxes during the five years prior;

- any liability for violating any laws relating to human trafficking during the five years prior;
- whether the contractor or subcontractor has been found by the Contractors State License Board to have performed covered work without a contractor's license or to have performed work without the appropriate license for the classification of work during the five years prior;
- whether any judgments, decisions, determinations, orders, or citations have been issued against the contractor or subcontractor by a court of law, an administrative agency authorized to enforce applicable federal, state and local labor standards laws, including but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, the City of Milpitas minimum wage ordinance or prevailing wage requirements, an arbitrator, or an arbitration panel that a) require the payment of money by the contractor or subcontractor, b) have not been fully satisfied, and c) are no longer subject to appeal; and
- whether enforcement of any unsatisfied judgments, decisions, determinations, orders, or citations issued against the contractor or subcontractor have been stayed by court order or operation of law.

In addition to the disclosure requirements detailed above, a "Covered Party" is also required to disqualify any contractor or subcontractor who refuses to complete the disclosure form and/or temporarily bar them from working on the project if the disclosure form is not submitted or contains false statements.

The Ordinance also indicates that a "Covered Party" shall also ensure any unsatisfied final wage theft judgement which occurs during the course of the project is paid, or the City has the ability to suspend or revoke their building permit subject to state law limitations, and subject to any appeal.

In order to enforce the Ordinance, it imposes a fine of up to $1,000 for each violation. The Ordinance also provides the right for a private party to bring a civil action against any "Covered Party", contractor or subcontractor for any violations. Finally, the City has the right to require the Covered Party to re-pay any City financial assistance provided if they are found to have an unsatisfied judgment.

It is important to note that staff is currently not trained in investigating potential complaints of non-compliance and the disclosure requirements outlined in the ordinance nor is staff time dedicated to handle potential complaints. It would require extensive resources to learn and understand the body of work related to the Ordinance. Therefore, prior to adoption of the Ordinance, staff had intended to contract with the City of San Jose for responding to complaints of non-compliance, which may require funding. The City of San Jose Office of Equality Assurance has over 20 years of experience with various construction-related wage compliance issues. However, at this time San Jose has not adopted a similar ordinance nor does it have an anticipated date of adoption so staff will need to explore other contractual options for enforcement. Staff has also not conducted robust outreach on this ordinance. Thus, staff is recommending bringing back additional information related to enforcement program and costs and community outreach, prior to ordinance adoption.

Policy Alternative:

Alternative 1: The City Council could choose not to introduce the Ordinance.

Pros: The City will not need to develop an enforcement program and incur associated costs for enforcement.

Cons: If the City Council does not introduce the Ordinance, the Responsible Construction Ordinance provisions will not become law in Milpitas in the future.

Reason not recommended: The City Council directed that the Ordinance return at a future City Council meeting, and staff is bringing this Ordinance forward per the City Council's request.

Alternative 2: Do not require additional information about enforcement and outreach efforts prior to adoption of the Ordinance.

Pros: The City will be able to move forward on this Ordinance in an expeditious manner.

Cons: The enforcement program and associated costs have not been determined. The City has also not engaged in stakeholder outreach.

Reason not recommended: Staff still needs to explore enforcement options, determine associated costs as well as conduct stakeholder outreach which may inform the Ordinance as currently written and prompt additional staff recommendations for effective enforcement of the Ordinance upon adoption.

Fiscal Impact:
Introduction and adoption of the Ordinance in itself would not lead to any financial impact; however, enforcement of the Ordinance would lead to a financial impact on the City in terms of staff time or other costs if the City opts to delegate enforcement to a neighboring agency pursuant to a contractual arrangement.

California Environmental Quality Act:
The introduction and adoption of this Ordinance is not a project subject to the California Environmental Quality Act (CEQA) as it can be seen with certainty that the project does not have the potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and is more akin to a administrative activity of the government intended to ensure wage laws are followed in the City pursuant to CEQA Guideline 15378.

Recommendation:
Following the reading of the title by the City Attorney, move to waive the first reading beyond the title and introduce Ordinance No. 65.150 adding Chapter 32 (Responsible Construction) to Title III of the Milpitas Municipal Code.

Attachment:
Ordinance No. 65.150 for introduction

REGULAR

NUMBER: **65.150**

TITLE: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS ADDING CHAPTER 32 (RESPONSIBLE CONSTRUCTION) TO TITLE III OF THE MILPITAS MUNICIPAL CODE**

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of _____, 2020, upon motion by_____ and was adopted (second reading) by the City Council at its meeting of _____, upon motion by _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Rich Tran, Mayor

APPROVED AS TO FORM:

_____
Christopher J. Diaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, pursuant to Article XI, Section 7 of the California Constitution, the City of Milpitas may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens; and

WHEREAS, the City Council of the City of Milpitas desires to adopt certain provisions requiring certain types of private developers receiving financial assistance from the City and involved in construction, alteration, and/or demolition work within the City, valued in excess of $500,000, to file disclosure forms with the City confirming their contractors and subcontractors have no unpaid judgments or outstanding violations; and

WHEREAS, the City Council finds that such provisions shall serve the best interests of the citizens of Milpitas by requiring that any work being performed on certain private construction projects in the City be made by responsible construction contractors; and

WHEREAS, this Ordinance is intended to combat wage theft and protect vulnerable worker populations in the City by establishing safeguards for responsible construction practices.

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

SECTION 1. RECORD AND BASIS FOR ACTION

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

SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE ADDING A NEW CHAPTER 32 TO TITLE III

Title III of the Milpitas Municipal Code is hereby amended by adding a new Chapter 32, "Responsible Construction," to read as follows:

Chapter 32 - RESPONSIBLE CONSTRUCTION

III-32-1.00 - Title

This Chapter shall be known as the "Responsible Construction Ordinance."

III-32-2.00 - Authority

This Chapter is adopted pursuant to the powers vested in the City of Milpitas under the laws and Constitution of the State of California, including, but not limited to, the police powers vested in the City pursuant to Article XI, Section 7 of the California Constitution.

III-32-3.00 - Definitions

The following words and phrases, whenever used in this Chapter, shall be construed as defined in this Section:

(a) "Building permit holder" means a person or entity that has obtained a building permit from the City to undertake a major construction project that has been granted any Financial Assistance. A building permit holder does not include an owner self-performing work on the owner's residence.

(b) "City" means the City of Milpitas, California or any agency designated by the City to administer the terms of this Chapter.

(c) "Covered party" means a developer or building permit holder as defined in this Chapter.

(d) "Developer" means an entity or person who owns or controls a major construction project that has been granted any Financial Assistance. Developer does not include an owner undertaking work on the owner's residence.

(e) "Final judgment" means a judgment, decision, determination, order, or citation, for which there is no pending appeal and the time for filing an appeal has passed, that was issued by:

(1) a court of law, an administrative agency authorized to enforce applicable federal, state and local labor standards laws, including but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, the City of Milpitas minimum wage ordinance, and prevailing wage requirements, or

(2) an arbitrator, or an arbitration panel.

(f) "Financial Assistance" means any financial incentive or investment provided by the City or a City-controlled entity or political subdivision to facilitate or support a major construction project, including:

(1) Taxes, fees, costs, rents, insurance or bond premiums, loans, interest rates, inclusionary housing obligations, inclusionary housing in-lieu fees, or other obligations that would normally be required, that are paid, reduced, charged at less than fair market value, waived, rebated, granted an exception to, or forgiven by the City, as well as any other City tax or fee break programs available to new developments or to a particular sub-category of developments, unless required by state law.

(2) The payment of money or the equivalent of money for the design, development, construction, financing or any other component related to development of the project, including, but not limited to, infrastructure costs, preconstruction costs, demolition costs, construction costs, financing costs, equipment costs, design costs, environmental review costs, and environmental mitigation costs; and

(3) Any loan or loan guarantee.

(g) "Major construction project" means a project that will involve construction, alteration, and/or demolition work in excess of $500,000 within the City.

III-32-4.00 - Bidding and Contracting Requirements

(a) A covered party shall require, in all solicitations or invitations for bids to perform work on a major construction project that has been granted or will be granted Financial Assistance, and prior to awarding any contract to perform work on a major construction project that has been granted or will be granted Financial Assistance, that every contractor and subcontractor performing work on the project in excess of $50,000 complete and return to the covered party the disclosure form required by this Chapter.

(b) A covered party shall disqualify a contractor or subcontractor from entering into a contract to perform work, and from performing such work for a covered party, if the required disclosure form has not been submitted, if the disclosure form is materially false or incomplete, or if the disclosure form reports that the contractor or subcontractor has an unsatisfied final judgment. Nothing in this Chapter shall preclude a covered party from disqualifying the contractor or subcontractor for additional reasons.

(c) A covered party shall file a copy of the completed disclosure form required by this Chapter with the City prior to the contractor or subcontractor performing work on the project.

(d) A contractor or subcontractor performing work for a covered party for which a disclosure form is required must complete the disclosure form prior to entering into a contract to perform the work.

(e) Upon notification from the City to a covered party that a contractor or subcontractor performing work for a covered party for which a disclosure form is required has not completed a disclosure form, or has submitted a

disclosure form that is incomplete, the covered party shall remove the contractor or subcontractor from the project within 48 hours and bar the contractor or subcontractor from performing further work on the project until such time the contractor submits a complete disclosure form.

(f) Upon notification from the City to a covered party that a contractor or subcontractor performing work for a covered party for which a disclosure form is required has submitted a disclosure form that is materially false, or has submitted a disclosure form that reports an unsatisfied final judgment, the covered party shall remove the contractor or subcontractor from the project within 48 hours and bar the contractor or subcontractor from performing further work on the project.

III-32-5.00 - Disclosure Form

(a) The disclosure form required by this Chapter shall be completed by each contractor and subcontractor, as specified in Section III-32-4.00(a), on a form provided by the City. The completed disclosure form shall be verified by a representative of the contractor or subcontractor under penalty of perjury.

(b) In the disclosure form, the contractor or subcontractor shall confirm the following facts regarding its past performance and work history and its current qualifications:

(1) Name, address, and telephone number

(2) Responsible managing officer

(3) Contractor state license number

(4) Name and location of the project

(5) Project owner or developer

(6) Party who retained the contractor or subcontractor to perform work on the project

(7) Approximate date the contractor or subcontractor is scheduled to commence work on the project

(8) Whether the contractor or subcontractor has been found liable by any court or administrative agency for failing to pay wages or benefits to an employee or for violating any wage and hour provisions of the California Labor Code or the Fair Labor Standards Act during the five years prior to completion of the disclosure form.

(9) Whether the contractor or subcontractor has been subject to any citations or penalties imposed by the U.S. Department of Labor, the California Department of Industrial Relations, the California Labor Commissioner's Office, or the California Division of Occupational Safety and Health during the five years prior to completion of the disclosure form.

(10) Whether the contractor or subcontractor has been subject to any cause findings by the California Department of Fair Employment and Housing or the U.S. Equal Employment Opportunity Commission for the laws enforced by those agencies during the five years prior to completion of the disclosure form.

(11) Whether the contractor or subcontractor has been found liable for failing to maintain worker's compensation insurance or for engaging in fraudulent activity related to worker's compensation insurance during the five years prior to completion of the disclosure form.

(12) Whether the contractor or subcontractor has been found liable by any court or administrative agency for retaliating or discriminating against a worker for making a complaint about a violation of laws enforced by the U.S. Department of Labor, the California Department of Industrial Relations, the California Department of Fair Employment and Housing, or the U.S. Equal

Employment Opportunity Commission during the five years prior to completion of the disclosure form.

(13) Whether the contractor or subcontractor has been found liable by any court or administrative agency for failing to pay any payroll taxes during the five years prior to completion of the disclosure form.

(14) Whether the contractor or subcontractor has been found liable, admitted guilt, or been found guilty by any court or administrative agency for violating any laws relating to human trafficking during the five years prior to completion of the disclosure form.

(15) Whether the contractor or subcontractor has been found by the Contractors State License Board to have performed covered work without a contractor's license or to have performed work without the appropriate license for the classification of work during the five years prior to completion of the disclosure form.

(16) Whether any judgments, decisions, determinations, orders, or citations, that a) require the payment of money by the contractor or subcontractor, b) have not been fully satisfied, and c) are no longer subject to appeal, have been issued against the contractor or subcontractor by:

(1) a court of law, an administrative agency authorized to enforce applicable federal, state and local labor standards laws, including but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, the City of Milpitas minimum wage ordinance, and prevailing wage requirements, or

(2) an arbitrator, or an arbitration panel.

(17) Whether enforcement of any unsatisfied judgments, decisions, determinations, orders, or citations issued against the contractor or subcontractor have been stayed by court order or operation of law.

III-32-6.00 - Access Requirements

(a) A covered party shall provide investigators for the City with access to the project jobsite upon request, and with the right to inspect payroll records and interview workers upon request, for the purpose of verifying compliance with any labor standards laws applicable to workers on the project.

(b) A covered party shall require its contractors and subcontractors to provide investigators for the City with access to the project jobsite upon request, and with the right to inspect payroll records and interview workers upon request, for the purpose of verifying compliance with any labor standards laws applicable to workers on the project.

(c) A contractor or subcontractor performing work on a project subject to this Chapter shall provide investigators for the City with access to the project jobsite upon request, and with the right to inspect payroll records and interview workers upon request, for the purpose of verifying compliance with any labor standards laws applicable to workers on the project.

(d) The City may contract with a non-profit organization to conduct investigations on behalf of the City for purposes of this Chapter and such investigators shall be provided with jobsite access and the right to inspect payroll records and interview workers upon request, for the purpose of verifying compliance with any labor standards laws applicable to workers on the project.

(e) Upon notification from the City to a covered party that a contractor or subcontractor refuses to provide the City with jobsite access and the right to inspect payroll records and interview workers that are required by this Chapter, the covered party shall remove the contractor or subcontractor from the project within 48 hours and bar the contractor or subcontractor from performing further work on the project.

III-32-7.00 - Retaliation Prohibited

No covered party, or contractor or subcontractor performing work for a covered party, shall discriminate or retaliate against any person or entity for cooperating with an investigation under this Chapter or for making a complaint concerning an alleged violation of this Chapter.

III-32-8.00 - Guarantee Against Wage Theft

(a) A covered party shall be jointly responsible for satisfying any final judgment issued against a contractor or subcontractor on its project to the extent it awards wages, benefits, penalties, interest, and attorneys' fees to a worker on account of the worker's performance of work on the project.

(b) Upon notice from the City of an unsatisfied final judgment, the covered party shall provide the City, within 30 days of the City's notice, with proof that the final judgment has been satisfied. If the covered party fails to provide such proof, the City may, in addition to pursuing any other remedies, and after first consulting with the City Attorney's Office, suspend or revoke any building permit issued to the covered party, pursuant to, and in compliance with, Section II-1-8.05 of the Milpitas Municipal Code.

(c) A covered party whose building permit has been suspended or revoked due to failure to satisfy a final judgment may request an appeal pursuant to the provisions of Section 5 of Chapter 20 of Title I (Standard Procedures) of the Milpitas Municipal Code.

III-32-9.00 - Enforcement

(a) A covered party, or contractor or subcontractor performing work for a covered party, shall be subject to a civil fine payable to the City of up to $1,000 for each violation of this Chapter.

(b) Any person injured by a violation of this Chapter may bring a civil action against a covered party, or contractor or subcontractor performing work for a covered party, for damages in any court of competent jurisdiction.

(c) Any person who contends that a contractor or subcontractor is performing work for a covered party for which a disclosure form is required by this Chapter and that no such disclosure form was filed with the City may file a complaint with the City supported by evidence to show the violation. The City shall promptly provide a copy of the complaint to the contractor or subcontractor and to the covered party and request a response within seven days. Unless the contractor or subcontractor provides a completed disclosure form within seven days, or establishes to the satisfaction of the City that no violation occurred, the City shall give notice to the covered party that the contractor or subcontractor must be removed from the project within 48 hours and barred from performing further work on the project.

(d) Any person who contends that a contractor or subcontractor performing work for a covered party for which a disclosure form is required by this Chapter has provided a disclosure form that is materially false or incomplete may file a complaint with the City supported by evidence to show the violation. The City shall promptly provide a copy of the complaint to the contractor or subcontractor and to the covered party and request a response within seven days. Unless the contractor or subcontractor establishes to the satisfaction of the City that no violation occurred, the City shall give notice to the covered party that the contractor or subcontractor must be removed from the project within 48 hours and barred from performing further work on the project.

(f) If a covered party is found to have an unsatisfied final judgment, then in addition to any other penalties, the City may require the covered party to repay the full amount of the Financial Assistance provided for that project, including but not limited to the full amount of any tax and fees that were reduced, suspended, or waived as part of an economic incentive program. Any such repayments shall be deposited in the fund which was the source of the incentive, or in the case or tax and fee breaks, in the fund to which the tax or fee would have been directed.

SECTION 3. SEVERABILITY

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

SECTION 4. EFFECTIVE DATE AND POSTING

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

MEMORANDUM

City Manager's Office

DATE: September 9, 2020

TO: Mayor and Council

THROUGH: Steve McHarris, City Manager

FROM: Ashwini Kantak, Assistant City Manager

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-RESONSE 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

FROM: Ashwini Kantak, Assistant City Manager

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

M E M O R A N D U M

Date: 09/15/2020

To: City Manager Steve McHarris, City Attorney Chris Diaz

CC: City Clerk Mary Lavelle

Subject: City Council Events

From: Councilmember, Karina Dominguez

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 proposed Council policy for events establishes 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, faith base organizations, Neighborhood Associations, non-profit organizations and other agencies providing a free service in Milpitas and are requesting fee waivers for events. These events support the City Council's priorities and shall not be related to campaigning or any other political advocacy efforts and shall generally serve a public purpose.

On November 5, 2019 a draft policy came before Council and feedback was provide to staff in order to bring back a policy with modifications. The final proposal for council consideration and approval can be found in attachment 1 of this memo.

The City of Milpitas' Facility Use Manual is the guiding document for the general use and rules of the City's Indoor and Outdoor facilities, fields and parks (Facility). At the Special City Council Budget Study Session on March 12, 2019, Council directed staff to bring back modifications to the Facility Use Manual that would enable the use of City facilities by City Councilmembers for non-campaign related community programs and events. These modifications are located on pages 4-8 of the Manual. A copy of the full manual can be here: http://www.ci.milpitas.ca.gov/wp-content/uploads/2016/08/Facility-Manual-Updated-062016-FINAL.pdf

Analysis:

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 organizations providing a public service in Milpitas shall continue to be brought forward for Council consideration.

Based on prior council direction and feedback we are proposing the following council policy for city sponsored events, please see attachment 1:

Under the California Constitution, Article XVI, Section 6, there is a prohibition on the gift of public funds unless there is a documented public purpose. Further, California Government Code Section 8314 prohibits the use of public resources, including land and facilities, for campaign related purposes.

City Councilmembers wishing to host a program or event in a City-owned Facility could implement a request and approval process as part of the City of Milpitas Facility Use Manual, as long as the proposed program or event is non-campaign related and has a wide-reaching public purpose serving the Milpitas community at large.

To ensure compliance with state law and City Council policy, the review and approval of a Councilmember's request to host a program or event in a City-owned Facility would go through a process ensuring the documentation of public purpose, availability of facility space, and approval of funds associated with the use of a City-owned Facility by the City Council. City Councilmember requests would be submitted on a request form to: 1) describe the proposed program or event scope, 2) state additional community partners, 3) explain how the event aligns with a city priority and 4) select a date that is not currently reserved by another group or departments. The request form would be reviewed by the City Attorney's office and City Manager's office for public purpose review and determination of an available facility. Once reviewed, the request would be agendized for a future City Council meeting for approval.

The revocation of an approval to a City Councilmember could occur if the use of the City facility violates state law of if the use is inconsistent with the Councilmember's written request.

The final language to update the City of Milpitas Facility Use Manual can be found in attachment 2 of this memo.

Fiscal Impact No additional funding is needed at this time.

Attachment 1

No. x-x Effective

: xx Revised:

CITY OF MILPITAS, CALIFORNIA

SUBJECT: COUNCIL POLICY FOR EVENTS

PURPOSE OF THE POLICY

The purpose of this policy is to establish City policy, guidelines and conditions for the use of funds appropriated to the City Council for hosting or donating to intergovernmental agencies and non-profit organizations and for requesting fee waivers for events. This policy addresses the desire of the City Council for individual Councilmembers to be able to host events that benefit the City and the Milpitas community. These events support the City Council's priorities and shall not be related to campaigning or any other political advocacy efforts and shall generally serve a public purpose.

PROCEDURES

A. General Conditions 1. The City Council has an approved budget for donations and fee waivers for intergovernmental agencies or non-profit organizations that provide Milpitas community benefit. In addition to this, each individual Councilmember shall have an approved budget for either hosting his/her own events or for donating to additional events and providing 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. 2. Guidelines for the use of City facilities for a Councilmember hosted or sponsored program or event are outlined in the City of Milpitas Facility Use Manual (Indoor and Outdoor Facilities). 3. Any events hosted or sponsored by an individual Councilmember shall be for a wide-reaching public purpose serving the

Milpitas community at-large, and shall support the priorities of the full Council. Events shall be open to the public and to any other Councilmembers who may wish to attend. Councilmember hosted events shall not be related to a campaign event. To ensure the integrity of the events, no hosted events shall take place in the three months preceding a municipal election. 4. Staff support for any individual Councilmember hosted events shall be limited to 5 hours, including staff time needed for facility use, unless approved by the full Council. The level of staff support, excluding general facility attendant staff, will be identified and assigned by the City Manager or his/her designee. 6.Events that are approved by the council would be able to use the city logo for marketing and communication purposes. 5. The approved budget may be used for facility rentals within the City of Milpitas, refreshments, contractual services, and supplies but cannot be used to provide gifts to event participants or to serve alcohol.

B. Responsibility of the Councilmember 1. Each Councilmember, with the assistance of staff, must complete the Event and Facility Use Request Forms and submit to the City Manager and City Attorney's office for review to ensure compliance with state law, and approval. 2. Event coordination and any purchase of refreshments and supplies for events hosted by individual Councilmembers shall be the responsibility of the individual Councilmember. 3. Each Councilmember shall submit all receipts related to the event within 30 days after the event in order to be reimbursed. 4. Each Councilmember shall provide a brief verbal report to the full Council on the benefits and outcome of the event, including event attendance.

C. Responsibility of the City Manager It is the City Manager or designee's responsibility to review and track the events budget for each Councilmember and to provide regular updates.

D. Expense Reimbursement Councilmembers shall submit expense reimbursement requests on Finance Department provided forms with original receipts within 30 days after the event.

Attachment 2

I. PRIORITIES

Priorities are designed to determine fee and reservation status.

1.1 To provide for public activities in the best interest of the Community, City facilities will be reserved in accordance with the following group priorities:

Priority I. City administered programs, including any program hosted by a councilmember for a non-campaign related community event with a wide-reaching public purpose serving the Milpitas community at-large, as determined by the City Manager in consultation with the City Attorney. Under the California Constitution, Article XVI, Section 6, there is a prohibition on the gift of public funds unless there is a documented public purpose. Further, California Government Code Section 8314 prohibits the use of public resources, including land and facilities, for campaign related purposes.

Any councilmember request under Priority I shall be on a form established by the City Manager. In the form, the councilmember shall state why the event is not campaign related and provide a documented public purpose consistent with state law. The City Attorney shall review the form to ensure compliance with state law. Approval of councilmember requests under Priority I shall be approved by the City Council

1. No deposit 3. No staff fee 2. No rental fee 4. No application fee

Priority II. Programs or activities for Senior Citizens and approved co-sponsored groups which are principally composed of local residents (51% or more), public schools located in Milpitas, the Milpitas Chamber of Commerce and governmental agencies(excluding staff trainings, poll worker trainings, staff retirement parties, staff / volunteer recognition events).

1. No deposit 2. Rental fee according to Fee Schedule / Joint Use Agreement 3. Staff fee according to Fee Schedule / Joint Use Agreement 4. Application fee (non-refundable) 5. Any applicable insurance and processing fees that may apply

Priority III. Non-profit groups that are organized for recreational, social, cultural, religious or civic purposes and whose membership is principally composed of local residents (51% or more) or who is based in Milpitas and renting no more than 3 rental dates per quarter.

1. Facility deposit according to the Fee and Deposit Schedule 2. Rental fee according to Fee Schedule 3. Staff fee according to Fee Schedule 4. Application fee (non-refundable) 5. Any applicable insurance and processing fees that may apply

Priority IV. Any other group, business, private school or individual resident of the City of Milpitas.

1. Facility deposit according to the Fee and Deposit Schedule 2. Rental fee according to Fee Schedule 3. Staff fee according to Fee Schedule 4. Application fee (non-refundable) 5. Any applicable insurance and processing fees that may apply

Priority V. Any non-resident group, business or individual.

1. Facility deposit according to the Fee and Deposit Schedule 2. Rental fee according to Fee Schedule 3. Staff fee according to Fee Schedule 4. Application fee (non-refundable) 5. Any applicable insurance and processing fees that may apply

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II. APPLICATIONS

1.A.Permits for use of City facilities (indoor and outdoor) shall be issued by the City upon the approval of the City Manager or authorized representative and shall be consistent with City regulations governing such use. No blanket or on-going permits will be allowed. Applications for consecutive-day events will be considered only during minimal use periods.

2.B. The use of those facilities shall not be inconsistent with other such use for City purposes or interfere with the regular conduct of City programs. City sponsored programs shall receive first priority over use by any other group or organization. The City reserves the right, if necessary, to preempt, or revoke permit (if previously issued) for the use if for any reason it becomes unavoidably necessary for the City to utilize said facility or facilities at the same time. If and

when such action is necessary, the City will give applicants as much advance notice as possible. The City also reserves the right to revoke any approval provided to a Milpitas councilmember under Priority I if the use of the City facility violates state law or if the use is inconsistent with the councilmember's written request.

3.C. Applications for use of indoor City facilities and parks will not be accepted more than one (1) year to the date prior to proposed use for Priorities II-IV.

4.D.Priority V applications will not be accepted more than 6 months prior to the proposed use.

5.E. Applications for the Milpitas Sports Center Large Gym will not be accepted more than 90 days prior to proposed use for Priorities II-V.

6.F. For outdoor City facilities and sports fields, applications are accepted six (6) months to the date prior to the proposed use for Priorities II-IV and 90 days for Priority V.

7.G. Applications will not be accepted with less than 30 days prior to the proposed date, unless authorized by the Recreation Services Manager or his/her authorized representative.

8.H. In cases where the earliest date to reserve a facility falls on a weekend (Saturday or Sunday) or City holiday, reservations will be accepted on the preceding weekday. Should the preceding weekday be a City holiday, applications will be accepted on the prior workday.

9.I. Priority III organizations may reserve up to three dates on one application per quarter and must submit an application according to the reservation schedule listed on Page 5. Groups may not use a facility without an application on file. Should additional maintenance or custodial services be required, or the group exceeds the reserved rental hours, the groups will be assessed additional fees or charges as necessary.

10.J. Priorities II and III may reserve indoor facilities for one-time special event or party under the set Fee Schedule for Priority IV rentals / charges.

11.K. Priority III groups may drop off Facility Use Application(s) with requested dates and times as outlined above during facility business hours.

12.L. On the following business day, the designated City representative will review all Priority III applications with requested dates and times and distribute dates equally between any groups requesting the same dates. Should there not be an equal amount of dates available, the city representative will do a lottery pull for any extra date an

M E M O R A N D U M

Date: 09/15/2020

To: City Manager Steve McHarris, City Attorney Chris Diaz

CC: City Clerk Mary Lavelle

Subject: City Council Events

From: Councilmember, Karina Dominguez

Background:

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Analysis:

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 organizations providing a public service in Milpitas shall continue to be brought forward for Council consideration.

Based on prior council direction and feedback we are proposing the following council policy for city sponsored events, please see attachment 1:

Under the California Constitution, Article XVI, Section 6, there is a prohibition on the gift of public funds unless there is a documented public purpose. Further, California Government Code Section 8314 prohibits the use of public resources, including land and facilities, for campaign related purposes.

City Councilmembers wishing to host a program or event in a City-owned Facility could implement a request and approval process as part of the City of Milpitas Facility Use Manual, as long as the proposed program or event is non-campaign related and has a wide-reaching public purpose serving the Milpitas community at large.

To ensure compliance with state law and City Council policy, the review and approval of a Councilmember's request to host a program or event in a City-owned Facility would go through a process ensuring the documentation of public purpose, availability of facility space, and approval of funds associated with the use of a City-owned Facility by the City Council. City Councilmember requests would be submitted on a request form to: 1) describe the proposed program or event scope, 2) state additional community partners, 3) explain how the event aligns with a city priority and 4) select a date that is not currently reserved by another group or departments. The request form would be reviewed by the City Attorney's office and City Manager's office for public purpose review and determination of an available facility. Once reviewed, the request would be agendized for a future City Council meeting for approval.

The revocation of an approval to a City Councilmember could occur if the use of the City facility violates state law of if the use is inconsistent with the Councilmember's written request.

The final language to update the City of Milpitas Facility Use Manual can be found in attachment 2 of this memo.

Fiscal Impact No additional funding is needed at this time.

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 & on City "sponsored" events	Dominguez	A	9/1/2020	Resched from 9/15/2020 to 10/06/2020
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) Restrict smoking in multi-unit bldgs - yes	Montano	A	1/7/2020	Ordinance pending. Discussed 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 w Vice Mayor to schedule on agenda	
	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

PREVIEW LIST OF AGENDA ITEMS

MILPITAS CITY COUNCIL AGENDA

OCTOBER 20, 2020

PRESENTATION

Proclaim October 2020 as *Filipino American Heritage Month*

CONSENT CALENDAR

1) Receive City Council calendars for October and November 2020 (City Clerk)
2) Approve City Council meeting minutes of Sept. 29 and October 6, 2020 (City Clerk)
3) 2nd reading/Adopt Ordinance No. 23.15 to update Purchasing section of Milpitas Municipal Code (Walter Rossmann)
4) 2nd reading/Adopt Ordinance No. 65.150 regarding Responsible Construction practices (Chris Diaz)
5) Adopt a Resolution Granting Acceptance of Soil Vapor Intrusion Mitigation Measures for Sal Cracolice Building, Project No. 3406, Authorize City Engineer to File a Notice of Completion, and Authorize him to Issue a Notice of Final Acceptance (Steve Erickson)
6) Adopt a Resolution Supporting Mechanism for Cost Recovery Associated Mutual Aid Requests Made through Cal Fire Assistance Agreement and Cal Fire Local Government Assistance by Hire Agreement (Rick Frawley)
7) Receive a Report on Railroad Quiet Zone process (Steve Erickson)
8) Approve and Authorize City Manager to Execute Amendment No. 2 to Agreement with Alta Planning and Design for $50,000 and Extend Term to December 31, 2021 for Trails & Bikeway Master Plan Update, Project No. 3448; and Approve a Budget Amendment (Steve Erickson)
9) Approve Change Order No. 2 for $268,841 for the contract with Redwood Construction and Equipment, Inc. for Citywide Parks and Playgrounds Rehabilitation Project (Steve Erickson)
10) Approve Amended Agreement with Insight for NEOGOV software in Human Resources (Jeannine Seher)

PUBLIC HEARING

11) Milpitas Municipal Financing Authority: Consider issuance of bonds the for the purpose of providing financing for a portion of the costs of public capital facilities for the City (Walter Rossmann)

COMMUNITY DEVELOPMENT

12) Update on Milpitas Metro (formerly TASP) Specific Plan (Ned Thomas)
13) Consider Adoption of Urgency Ordinance No. 3xx to Establish a Cap on Food Service Delivery Fees (Alex Andrade)

COMMUNITY SERVICES

14) Receive Presentation on Parks and Recreation Master Plan Update Fee Assessment and Development of Cost Recovery Policy and Provide Direction to Staff on Project No. 5115 (Steve Erickson)

PUBLIC SAFETY

15) Receive and Accept the City of Milpitas Emergency Management Program Assessment and Implementation Plan (Brian Sherrard)

REPORT

16) Review list of Future Agenda Items Requested by City Councilmembers (Mayor/City Clerk)

PREVIEW NEXT AGENDA

17) Preview list of items for November 3, 2020 (City Clerk)