REGULAR MEETING OF THE MILPITAS CITY COUNCIL

AGENDA

TUESDAY, JUNE 21, 2022
CITY COUNCIL CHAMBERS, 455 E CALAVERAS BLVD, MILPITAS, CA
7:00 PM (PUBLIC BUSINESS)

For assistance in the following languages, you may call:
Đối với Việt Nam, gọi 408-586-2400
Para sa Tagalog, tumawag sa 408-586-3051
Para español, llame 408-586-3072

The City Council meeting is held in the City Council Chamber at City Hall, 455 E. Calaveras Blvd., Milpitas and via teleconference/Zoom webinar.
You may watch the Council meeting without providing public comment by accessing it via links here.

Meeting shall be livestreamed - Go to:
Facebook: https://www.facebook.com/CityofMilpitas/
YouTube: https://www.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 in person or by registering for the zoom meeting in advance. To register you will need to provide an email address (not disclosed) and a name. To minimize technical difficulties, please make sure that you have the latest version of the Zoom Application. Below is the link to register for this meeting only:

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

After you register a link will be sent to you to join the City Council meeting in order to give your 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 on your phone, 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. The Mayor will call the speakers to begin.

All comments provided shall be limited to three minutes or less as determined by the Mayor. All members of the public will be limited to one comment per agenda item, and one comment for non-agenda items.

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 (7:00 PM)

PLEDGE OF ALLEGIANCE

INVOCATION (Vice Mayor Montano)

PRESENTATIONS (7:05 PM)

- Commendation to Retiring Deputy Fire Chief Albert Zamora
- Commendation of Appreciation for Businesses Supporting the Community
- Russell Girls Volleyball Team Recognition

PUBLIC FORUM (7:10 PM)

Those in the audience and via Zoom are invited to address City Council on any subject not on tonight's agenda. In-person speakers wishing to address the Council are requested, but not required to complete a Speaker Card and submit it to the Mayor. In-person speakers will then be asked to come up to the podium and state their name for the record. Those interested in speaking via Zoom may do so by following the instructions on page one (1) of the agenda. Comments may be limited to three (3) minutes or less at the Mayor's discretion. As an item not listed on the agenda, no response is required from City staff or the Council and no action can be taken. The City Council may instruct the City Manager to place the item on a future meeting agenda.

NOTE: If a member of the public wishes to share any presentation materials for Council consideration, they must be submitted to the Clerk's Office by email to CityClerk@ci.milpitas.ca.gov by 12:00 p.m. on the day of the meeting. No presentations will be accepted in person in the Council Chambers.

ANNOUNCEMENTS AND FUTURE AGENDA ITEMS (7:15 PM)

Members of the City Council or City Manager may make brief announcements at this time. Members of the City Council may also suggest future agenda items 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 future agenda for City Council discussion.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

READING OF THE CITY COUNCIL CODE OF CONDUCT

APPROVAL OF AGENDA

CONSENT CALENDAR (7:25 PM)

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

C1. Receive the City Council Calendar of Meetings for June and July 2022 (Staff Contact: Wendy Wood, City Clerk, 408-586-3001)

Recommendation: Receive the City Council Calendar of Meetings for June and July 2022.

C2. Approve the Regular and Special Meeting Minutes of June 7, 2022 (Staff Contact: Wendy Wood, City Clerk, 408-586-3001)

Recommendation: Approve the Regular and Special Meeting Minutes of June 7, 2022.

C3. Receive the Preview List of Anticipated Items for the Next Regular City Council Meeting (Staff Contact: Wendy Wood, City Clerk, 408-586-3001)

Recommendation: Receive the list of anticipated agenda items for the next regular City Council meeting.

C4. Receive and Review the List of Agenda Items Requested by City Councilmembers (Contact: Mayor and City Councilmembers, 408-586-3000)

Recommendation: Review the list of items that have been requested by City Councilmembers and provide direction to staff as necessary. No substantive discussion about any specific item shall occur and the City Council shall hold all debate about the item until it is scheduled as a full agenda item.

C5. Authorize the City Manager to Accept CalRecycle Grant of $107,661 and Approve Related Budget Amendment (Elaine Marshall, Deputy Public Works Director, 408-586-2603)

Recommendation: Authorize the City Manager to accept grant funding from CalRecycle's One-Time Senate Bill 1383 Local Assistance Grant and approve related budget amendment for revenues in the amount of $107,661 for the Solid Waste Fund (Fund 280) for FY 2021-22.

C6. Approve and Authorize the City Manager to Execute a Stormwater Management Facilities Operation and Maintenance Agreement for Milpitas Town Center 2008 LP for the Chick-fil-A project at 755 East Calaveras Boulevard. (Staff Contact: Steve Erickson, 408-586-3301)

Recommendation: Approve and authorize the City Manager to execute a Stormwater Management Facilities Operation and Maintenance Agreement for Milpitas Town Center 2008 LP for the Chick-fil-A project at 755 East Calaveras Boulevard.

C7. Authorize City Manager to Enter into a Memorandum of Understanding with the MUSD for Expansion of After the Bell for the Extended Learning Opportunities Program (Staff Contact: Renee Lorentzen, Director of Recreation and Community Services, 408-586-3409)

Recommendation: Authorize City Manager to enter into a Memorandum of Understanding with the MUSD for expansion of After the Bell for the Extended Learning Opportunities Program.

C8. Approve the Accounts Receivable Write-offs for the Fiscal Year Ending June 30, 2022 (Lauren Lai, Finance Director, 408-586-3111)

Recommendation: Approve the Accounts Receivable write-offs in the amount of $71,246 for the fiscal year ending June 30, 2022.

C9. Approve and Authorize the City Manager to Execute the Agreement for a One-Year Renewal with Brown & Brown for Excess Workers' Compensation Insurance Coverage for a total agreement amount of $302,134 (Staff Contact: Jeannine Seher, Human Resources Director, 408-586-3086)

Recommendation: Approve and Authorize the City Manager to Execute the Agreement for a One-Year Renewal with Brown & Brown for Excess Workers' Compensation Insurance Coverage in the amount of $302,134

C10. Approve and Authorize the City Manager to Enter into a Side Letter to Amend the Memorandum of Understanding between the City and LIUNA/UPEC Local 792, representing the Milpitas Employees Association (MEA) Unit, Mid-Management-Confidential Unit (Mid-Con), and the Professional and Technical Unit (ProTech) and to Approve and Authorize the City Manager to Enter into three Master Professional Services Agreements for On-Call Temporary Staffing Services (Staff Contact: Jeannine Seher, Human Resources Director, 408-586-3086)

Recommendation: Approve and authorize the City Manager to enter into a Side Letter to amend the Memorandum of Understanding between the City and LIUNA/UPEC Local 792, representing the

Milpitas Employees Association (MEA) Unit, Mid-Management-Confidential Unit (Mid-Con), and the Professional and Technical Unit (ProTech) and to approve and authorize the City Manager to enter into three Master Professional Services Agreements for On-Call Temporary Staffing Services, with a Not to Exceed annual amount of $500,000 for each agreement.

C11. Receive an Update on the Emergency Replacement of Two (2) Boilers and Install of a Temporary Heating System for the Public Works, Information Technology, and Police Department Building and Determine that the Condition Continues to Constitute an Emergency (Staff Contact: Tony Ndah, Public Works Director, 408-586-2602)

Recommendation: Receive an update on the emergency replacement of two boilers and the installation of a temporary heating system for the Public Works, Police and Information Technology Department buildings; and (2) Determine by a four-fifths vote that the condition continues to constitute an emergency.

C12. Amended and Restated Weed Abatement Agreement Between City of Milpitas and the County of Santa Clara Consumer and Environmental Protection Agency - Weed Abatement Program (Staff Contact: Arthur Belton / Albert Zamora, Deputy Fire Chief / Fire Marshal, 408-586-3378 / 3371)

Recommendation: Approve and authorize the City Manager to execute and sign the Amended and Restated Weed Abatement Agreement Between City of Milpitas and the County of Santa Clara Consumer and Environmental Protection Agency - Weed Abatement Program.

C13. Approve Delegation of Authority to the City Manager or Designee to Approve and Execute Project Related Documents and Urgent Administrative Items During the City Council Summer Recess, from the Last City Council Meeting Held in June through August 9, 2022 (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053)

Recommendation: Approve delegation of authority to the City Manager, or his designee, to approve and execute project related documents, including contract documents, and urgent administrative items during the City Council summer recess from the last City Council meeting held in June through August 9, 2022.

C14. Receive the Monthly Report for Unhoused Services (Staff Contact: Sharon Goei, Building Safety and Housing Director, 408-586-3260)

Recommendation: Receive the March 2022 report for unhoused services.

C15. Adopt a Resolution Accepting and Authorizing the City Manager to Execute the 5- Year Agreement Between Hiderliter De Llamas and Associates (HdL) and the City of Milpitas, and Approving and Authorizing a Sole Source Purchase for the Procurement of HdL Prime Business License Software with Web Module Services for a 5-Year Total Cost of Approximately $123,700. (Staff Contact: Lauren Lai, Finance Director, 408-586-3111)

Recommendation: Adopt a resolution accepting and authorizing the City Manager to execute the 5-Year Agreement Between Hiderliter De Llamas and Associates (HdL) and the City of Milpitas, and Approving and Authorizing a Sole Source Purchase for the Procurement of HdL Prime Business License Software with Web Module Services for a 5-Year Total Cost of Approximately $123,700.

C16. Waive the Second Reading and Adopt Ordinance No. 38.845 Amending Sections of Chapter 10 of Title XI and Sections of Chapter 100 of Title V of the Milpitas Municipal Code Relating to Mobile Food Vending (Food Trucks) (Staff Contact: Ned Thomas, Planning Director, 408-586-3273)

Recommendation: Move to waive the second reading and adopt Ordinance No. 38.845 amending sections of Chapter 10 of Title XI and Section of Chapter 100 of Title V of the Milpitas Municipal Code relating to mobile food vending (Food Trucks).

C17. Second Reading of Ordinance No. 312 of the City Council of the City of Milpitas Adding Section 3.5 ("Regulation of Lobbying Activities") to Chapter 310 ("Open Government Ordinance"), of Title I ("Administration") of the Milpitas Municipal Code (The "Code") and Modifying Section I-310-3.160 of the Code (Staff Contact: Michael Mutalipassi, City Attorney, 408-586-3040)

Recommendation: Move to waive the second reading and adopt Ordinance No. 312 adding Section 3.5 ("Regulation of Lobbying Activities") to Chapter 310 ("Open Government Ordinance"), of Title I ("Administration") of the Milpitas Municipal Code (the "Code") and Modifying Section I-310-3.160 of the Code).

C18. Adopt a Resolution to Supersede Resolution 9145 to Add the Commemoration of India Independence Day as a Flag-raising Event at Cesar Chavez Plaza (Staff Contact: Renee Lorentzen, Director of Recreation and Community Services, 408-586-3409)

Recommendation: Adopt a Resolution to Supersede Resolution 9145 to Add the Commemoration of India Independence Day as a Flag-raising Event at Cesar Chavez Plaza

C19. Accept Water and Wastewater Arrearage Grants from the Water State Board, Authorize a Subsidy for Residential Accounts with an Outstanding Balance of 85 days and Over and Approve a Budget Appropriation of $248,048 for Grants and $80,000 for Residential Utility Account Subsidy (Staff Contact: Lauren Lai, Finance Director, 408-586-3111)

Recommendation: (1) Accept Water and Wastewater Arrearage Grants from the Water State Board; (2) Authorize a subsidy for residential accounts with an outstanding balance of 85 days and over; and (3) Approve a budget appropriation of $248,048 for grants and $80,000 for residential utility account subsidy

C20. Consider Recommendations from Mayor Tran for Appointments to City Commissions (Contact: Mayor Tran, 408- 586-3029)

Recommendation: Receive Mayor Tran's recommendation and approve the appointment to Economic Development and Trade Commission.

C21. Approve the City Council Policy for Naming Streets, Parks and Facilities (Staff Contact: Renee Lorentzen, Director of Recreation and Community Services, 408-586-3409)

Recommendation: Approve the City Council Policy for Naming Streets, Parks and Facilities.

C22. Reconfirm Findings and Determinations Under Resolution No. 9165 and Assembly Bill 361 for the Continuation of Virtual Meetings of the City Council and Legislative Bodies (Staff Contact: Michael Mutalipassi, City Attorney, 408-586-3040)

Recommendation: Move to reconfirm findings and determinations under Resolution No. 9165 and Assembly Bill 361 for the continuation of virtual meetings of the City Council and Legislative Bodies.

C23. Authorize the City Manager to Reject All Proposals for RFP No. 22-058 for Abandoned Shopping Cart Retrieval Services (Staff Contact: Sharon Goei, Building Safety and Housing Director, 408-586-3260; and Chris Schroeder, Purchasing Agent, 408-586-3161)

Recommendation: Authorize the City Manager to Reject All Proposals for RFP No. 22-058 for Abandoned Shopping Cart Retrieval Services.

C24. Approve and Authorize the City Manager to Execute Amendment No. 4 to the Shopping Cart Retrieval Services Contract with Alice Wright (Staff Contact: Sharon Goei, Building Safety and Housing Director, 408-586-3260; and Chris Schroeder, Purchasing Agent, 408-586-3161)

Recommendation: Approve and authorize the City Manager to execute Amendment No. 4 to the Shopping Cart Retrieval Services Contract with Alice Wright, adding a one-year extension to the five-year contract, for a total of six years and increasing the total not-to-exceed amount by $34,920.00 from $111,384.62 to $146,304.62.

C25. Adopt a Resolution to Amend Resolution No. 1626 the City of Milpitas' Classification Plan to Approve and Adopt the Classification Specifications and Pay Schedules for the Legal Assistant, Assistant City Attorney, Deputy City Attorney and Deputy Director of Information Technology (Staff Contact: Jeannine Seher, Human Resources Director, 408-586-3086)

Recommendation: Adopt a resolution to Amend Resolution No. 1626 the City of Milpitas' Classification Plan to approve and adopt the Classification Specifications and Pay Schedules for the Legal Assistant, Assistant City Attorney, Deputy City Attorney and Deputy Director of Information Technology.

C26. Adopt a Resolution Approving Rental Rates for Public Spaces in City Hall (Staff Contact: Renee Lorentzen, Director of Recreation and Community Services, 408-586-3409)

Recommendation: Adopt a resolution approving rental rates to be added to the Master Fee Schedule for the City Hall Rotunda and the City Hall City Council Chambers.

C27. Approve and Authorize the City Manager to Execute Amendment No. 2 with Avolve Software for the Maintenance Contract Extension for ProjectDox (Staff Contact: Daniel Nam, IT Director, 408-586-2712; and Chris Schroeder, Purchasing Agent, 408-586-3161)

Recommendation: Approve and authorize the City Manager to Execute Amendment No. 2 with Avolve Software to extend the maintenance agreement for one (1) additional year and increase the existing contract amount of $369,731.07 by $29,906.55 for a total contract amount of $399,237.62

C28. Approve the Donation and Fee Waiver/Reduction City Council Policy (Staff Contact: Renee Lorentzen, Director of Recreation and Community Services, 408-586-3409)

Recommendation: Approve the Donation and Fee Waiver/Reduction City Council Policy.

PUBLIC HEARINGS (7:30 PM)

Members of the public may be allotted up to three (3) minutes or less at the Mayor's discretion, to comment on any public hearing item. Applicants/Appellants and their representatives may be allotted up to a total of ten (10) minutes for opening statements and up to a total of five (5) minutes maximum for closing statements. Items requested/recommended for continuance are subject to Council's consent at the meeting.

29. Conduct a Public Hearing and Adopt a Resolution Confirming the Assessment and Ordering the Levy for the Landscaping and Lighting Maintenance Assessment District No. 98-1, Sinclair Horizon for Fiscal Year 2022-23 (Staff Contact: Steve Erickson, Engineering Director/City Engineer, 408-586-3301)

Recommendation: Open the public hearing, receive any comments, and move to close the hearing following any testimony, and adopt a resolution confirming the assessment and ordering the levy for Landscaping and Lighting Maintenance Assessment District No. 98-1, Sinclair Horizon for Fiscal Year 2022-23.

30. **Conduct a Public Hearing and Adopt a Resolution Confirming the Assessment and Ordering the Levy for the Landscaping and Lighting Maintenance Assessment District No. 95-1, McCarthy Ranch for Fiscal Year 2022-23 (Staff Contact Steve Erickson, Engineering Director, 408-586-3301)**

Recommendation: Open the public hearing, receive any comments, and move to close the hearing following any testimony, and Adopt a Resolution confirming the assessment and ordering the levy for Landscaping and Lighting Maintenance Assessment District No. 95-1, McCarthy Ranch for Fiscal Year 2022-23.

COMMUNITY DEVELOPMENT (8:00 PM)

31. **Receive a Follow-up Presentation from Staff and provide Direction on Policy Options and Cost Estimates to Establish a Local Tobacco Retail Permitting (TRP) Program and to Regulate Tobacco Retail Locations and the Sale of Flavored Tobacco and Electronic Cigarette Products in Milpitas (Staff Contacts: Ned Thomas, Planning Director, 408-586-3273; Jay Lee, Principal Planner, 408-586-3077)**

Recommendation: (1) Receive a presentation from staff; and (2) Provide feedback and direction on policy options and cost estimates to establish a local tobacco retail permitting program and to regulate Tobacco Retail Locations and the Sale of flavored tobacco and electronic cigarette products in Milpitas.

COMMUNITY SERVICES AND SUSTAINABLE INFRASTRUCTURE (9:00 PM)

32. **Authorize City Manager to Execute the Fourth Amendment to the Franchise Agreement with MSI for the purpose of Assignment of Contract and Modify Certain Service Provisions (Staff Contact: Tony Ndah, Public Works Director, 408-586-2602)**

Recommendation: Authorize City Manager to Execute the Fourth Amendment to the Franchise Agreement with MSI for the purpose of Assignment of Contract and modify certain service provisions.

LEADERSHIP AND SUPPORT SERVICES (10:00 PM)

33. **Rescind Resolution No. 9171 and Approve a Resolution Submitting to the Qualified Voters of the City of Milpitas a Measure Amending Chapter 400 (Mayoral and Councilmanic Term Limits) of Title 1 (Administration) of the Milpitas Municipal Code to Amend Term Limits on Mayoral and City Council Member Service, at a General Municipal Election to be Consolidated with the Statewide General Election to be Held November 8, 2022, and Setting Rules for Arguments and Rebuttals for and Against Said Measure(Staff Contact: Michael Mutalipassi, City Attorney, 408-586-3040)**

Recommendation: (1) Motion to rescind Resolution No. 9171. (2) Determine whether the Council wishes to print the text of the ballot measure at a cost of $8,482 per page. (3) Motion to approve a Resolution Submitting to the Qualified Voters of the City of Milpitas a Measure Amending Chapter 400 (Mayoral and Councilmanic Term Limits) of Title 1 (Administration) of the Milpitas Municipal Code to Amend Term Limits on Mayoral and City Council Member Service, at a General Municipal Election to be Consolidated with the Statewide General Election to be Held November 8, 2022, and Setting Rules for Arguments and Rebuttals for and Against Said Measure.

ADJOURNMENT (10:30 PM)

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

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

The Open Government Ordinance is codified in the Milpitas Municipal Code as Title I Chapter 310 and is available online at the City's website www.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 408-586-3001 for more information.

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

Milpitas City Council Calendar

June 2022

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1 **2:00 PM**-Santa Clara VTA Monthly Briefing - Northeast Group (CM) **5:30 PM**-Veterans Commission (RT) ~~**7:00 PM** Community Advisory Commission (EC)~~	**2** **5:30 PM**-Milpitas Chamber of Commerce Board (EC) **5:30 PM**-Santa Clara VTA Board of Directors (CM)	**3** United States Conference of Mayors, Reno Nevada (RT/CM)	**4**
5 United States Conference of Mayors, Reno Nevada (RT/CM)	**6** **5:00 PM**-Parks, Recreation & Cultural Resources Commission (Park Tour: Augustine Park) (CM)	**7** **5:30 PM**-Closed Session (Special City Council to follow) **7:00 PM**-City Council	**8** **12:00 PM**-Mayors and Council Members Roundtable (Virtual) **7:00 PM**-Silicon Valley Clean Energy Board of Directors (EC) **7:00 PM**-Planning Commission	**9** **4:00 PM**-Treatment Plant Advisory Committee (CM) **4:00 PM**-Santa Clara VTA Policy Advisory Committee (AP) **6:00 PM**-Cities Association General Membership Meeting **7:00 PM**-Youth Advisory Commission (EC)	**10** ***4:30 PM**-City Council Finance Subcommittee (RT/CM)* **8:30 PM**-Movie Night Out – Ghostbusters Afterlife [Starlite Park]	**11**
12	**13** ~~**4:30 PM** Economic Development and Trade Commission (KD)~~	**14** **4:00 PM-**Milpitas HOPE Suicide Prevention Task Force **5:30 PM-**Special City Council	**15** ~~**6:00 PM** Energy and Environmental Sustainability Commission (EC)~~	**16** ~~**5:30 PM** Measure F Oversight Committee~~ **6:30 PM**-Bay Area Water Supply & Conservation Agency (CM)	**17** **9:00 AM**-VTA Board of Directors Meeting (CM) **6:30 PM**-Summer Concert Series – Good Time Collective [Murphy Park]	**18** **3:00 PM**-Milpitas Family Campout (Higuera Adobe)
19	**20** **7:00 PM**-Science, Technology, and Innovation Commission (RT)	**21** **7:00 PM**-City Council	**22** **5:30 PM**-Cities Assoc. of SCC - Recycling and Waste Reduction Commission (AP) **7:00 PM**-Planning Commission	**23** **12:00 PM**-SCC Library JPA Board of Directors (EC) **5:30 PM**-Commissioners' recognition and State of the City Address (Veterans Plaza)	**24** **8:30 PM**-Movie Night Out – Luca (Sunnyhills Augustine Park)	**25**
26	**27** **7:00 PM-**Special Arts Commission (RT)	**28** **1:30 PM**-Senior Advisory Commission (EC)	**29** **6:00 PM-**Community Workshop: Gateway-Main St. Specific Plan	**30**		

Finance Subcommittee will only meet as needed

Updated 6/15/22

June 2022

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August 2022

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Item # C1.

Milpitas City Council Calendar

July 2022

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	**2**
3	**4** **INDEPENDENCE DAY** **City Hall Closed** 	**5**	**6** **2:00 PM**-Santa Clara VTA Monthly Briefing - Northeast Group (CM)	**7** **5:30 PM**-Santa Clara VTA Board of Directors (CM) **5:30 PM**-Milpitas Chamber of Commerce Board (EC)	**8**	**9**
10	**11**	**12**	**13** **7:00 PM**-Silicon Valley Clean Energy Board of Directors (EC)	**14** **4:00 PM**-Santa Clara VTA Policy Advisory Committee (AP) **4:00 PM**-Treatment Plant Advisory Committee (CM) **7:00 PM**-Cities Assoc of SCC (CM)	**15** ****4:30 PM**-City Council Finance Subcommittee (RT/CM)*	**16**
17	**18**	**19**	**20**	**21** **6:30 PM**-Bay Area Water Supply Conserv Agency (CM)	**22**	**23**
24	**25**	**26**	**27**	**28** **4:00 PM**-Silicon Valley Regional Interoperability Authority (SVRIA) (KD)	**29**	**30**
31						

****Finance Subcommittee will meet only as needed***

Updated 6/15/22

JOINT MEETING OF THE MILPITAS CITY COUNCIL AND MILPITAS HOUSING AUTHORITY

AGENDA

TUESDAY, JUNE 7, 2022
CITY COUNCIL CHAMBERS, 455 E CALAVERAS BLVD, MILPITAS, CA
7:00 PM (PUBLIC BUSINESS)

The City Council of the City of Milpitas convened on the regular City Council meeting day of June 7, 2022, in the City Council Chamber at City Hall, 455 E. Calaveras Blvd., Milpitas, and via teleconference/Zoom webinar.

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

Mayor Tran called the regular City Council meeting to order at 7:10 PM. Roll call was taken by City Clerk Wood.

PRESENT: Mayor Tran, Vice Mayor Montano, Councilmembers Chua, and Phan

ABSENT: None

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Tran.

INVOCATION

The Invocation was led by Vice Mayor Montano.

PRESENTATIONS

Mayor Tran proclaimed July as Parks and Recreation Month in the City of Milpitas.

PUBLIC FORUM

Those in the audience and via Zoom are invited to address City Council on any subject not on tonight's agenda. In-person speakers wishing to address the Council are requested, but not required to complete a Speaker Card and submit it to the Mayor. In-person speakers will then be asked to come up to the podium and state their name for the record. Those interested in speaking via Zoom may do so by following the instructions on page one (1) of the agenda. Comments may be limited to three (3) minutes or less at the Mayor's discretion. As an item not listed on the agenda, no response is required from City staff or the Council and no action can be taken. The City Council may instruct the City Manager to place the item on a future meeting agenda.

The following people spoke under Public Forum:

1. Voltaire Montemayor

ANNOUNCEMENTS AND FUTURE AGENDA ITEMS

Members of the City Council or City Manager may make brief announcements at this time. Members of the City Council may also suggest future agenda items 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 future agenda for City Council discussion.

Mayor Tran thanked staff for their work on the Memorial Day event and stated that he attended the United States Conference of Mayors in Reno over the weekend. He made the following requests:

1. Propose a Vision Zero Action Plan to address vehicle and pedestrian conflicts.
2. Agendize a letter to the VTA opposing the Berman Bill for the next regular meeting.
3. Agendize a fee waiver for the Eagle Scout ceremony.
4. Agendize consultant funding for a Sunny Hills Historical Designation after the July recess.

Councilmember Chua attended the Chariot Festival event, spoke about the upcoming June 11 Senior Center Summer BBQ event, shared two short videos for the events, and made the following request:

1. Receive quarterly or monthly statistics on the Home Key project.

Mayor Tran followed up on Councilmember Chua's request and asked that the Home Key project information come back as a presentation at the second meeting in August. He would like the Police Department to present the crime statistics from when Home Key opened through the second meeting in August.

Councilmember Dominguez made the following requests:

1. Staff to provide and explain the management manual for Project Home Key, have staff check to see if the MOU is being followed, including the formation of a community oversight committee, and explore having a conversation with the County to have check-ins of the tenant units. By a show of hands, there was a majority in favor of this item.
2. Agendize and direct staff to work on a new way for the City of Milpitas to allocate the money designated for Council health insurance. Explore allocating the funds for Councilmember health insurance into a general office fund for each Councilmember and allow that Councilmember to use the money to fund City programs, resources, or support non-profit organizations that serve Milpitas residents, beginning December 2022. By a show of hands, there was not a majority in favor of this item.

Vice Mayor Montano announced that she attended Rancho Middle School and Cal Hills High School graduations, attended the United States Conference of Mayors in Reno, and commented on a youth skateboarder that passed away recently. She made the following requests:

1. Have a memorial plaque or bench in honor of the youth skateboarder. By a show of hands, there was a majority in favor of this item.
2. Establish a SPAR (Strategic Property Acquisition Reserve) fund modeled after the City of Mountain View to set aside money to purchase real estate. By a show of hands, there was a majority in favor of this item.

ANNOUNCEMENT OF CONFLICT OF INTEREST

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

READING OF THE CITY COUNCIL CODE OF CONDUCT

Mayor Tran read aloud the City Council Code of Conduct.

APPROVAL OF AGENDA

Motion: to approve the June 7, 2022, regular meeting agenda.

Motion/Second: Mayor Tran / Vice Mayor Montano

Motion carried by the following:

AYES: Councilmembers Chua, Dominguez, Phan, Vice Mayor Montano, Mayor Tran

NOES: None

CONSENT CALENDAR

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

Mayor Tran asked to pull item C13 and asked that it be heard after the public hearing.

Vice Mayor Montano asked to pull item C14.

Motion: to approve the Consent Calendar removing items C13 and C14 and including the revised agreement for item C8.

Motion/Second: Mayor Tran / Vice Mayor Montano

Motion carried by the following:

AYES: Councilmembers Chua, Dominguez, Phan, Vice Mayor Montano, Mayor Tran

NOES: None

C1. Receive the City Council Calendar of Meetings for June 2022 (Staff Contact: Wendy Wood, City Clerk, 408-586-3001)

Received the City Council Calendar of Meetings for June 2022.

C2. Approve the Regular Meeting Minutes of May 17, 2022 (Staff Contact: Wendy Wood, City Clerk, 408-586-3001)

Approved the Regular Meeting Minutes of May 17, 2022.

C3. Receive the Preview List of Anticipated Items for the Next Regular City Council Meeting (Staff Contact: Wendy Wood, City Clerk, 408-586-3001)

Received the list of anticipated agenda items for the next regular City Council meeting.

C4. Receive and Review the List of Agenda Items Requested by City Councilmembers (Contact: Mayor and City Councilmembers, 408-586-3000)

Reviewed the list of items that have been requested by City Councilmembers.

C5. Adopt a Resolution Calling for the General Municipal Election on November 8, 2022, and Requesting Consolidation of the Election in Accordance with California Elections Code Section 10418, and requesting services from the Santa Clara County Registrar of Voters (Staff Contact: Wendy Wood, City Clerk, 408-586-3001)

Adopted **Resolution No. 9161** calling a General Municipal Election for the City of Milpitas on Tuesday, November 8, 2022, requesting consolidation of the election in accordance with California Elections Code Section 10418, and requesting services from the Santa Clara County Registrar of Voters.

C6. Adopt a Resolution to Approve Project Plans & Specifications and Award the Construction Contract to Marina Landscape, Inc., for McCandless Park Sports Field, Project No. 5102 (Staff Contact: Steve Erickson, Engineering Director/City Engineer, 408-586-3301)

Adopted **Resolution No. 9162** to approve project plans & specifications; award the construction contract to the lowest responsible bidder submitting a responsive bid, Marina Landscape, Inc., in the amount of $594,000; authorize the City Manager to execute the construction contract with Marina Landscape, Inc; and authorize the Engineering Director/City Engineer to negotiate and execute contract change order(s) in an aggregate amount not to exceed $148,500 for McCandless Park Sports Field, Project No. 5102.

C7. Adopt a Resolution to Summarily Vacate an Existing Water Line Easement at 1750 McCandless Drive (Staff Contract: Steve Erickson, Engineering Director/City Engineer, 408-586-3301)

Adopted **Resolution No. 9163** to summarily vacate an existing water line easement at 1750 McCandless Drive

C8. Adopt a Resolution Approving the Sole Source Purchase of Body Worn Cameras, Associated Equipment, Conducted Energy Devices, and Cloud-Based Storage Subscription; and Approve the Master Services and Purchasing Agreement with Axon to Provide Body Worn Cameras, Associated Equipment, and Cloud-Based Storage Subscription in an Amount Not-to-Exceed $182,635.80 for the FY22-23 Year, with a Total Not-to-Exceed Amount of $913,178.60 Over the Five-Year Term (Staff Contact: John Torrez, Assistant Police Chief, 408-586-2408)

Adopted **Resolution No. 9164** approving the sole source purchase of body-worn cameras, associated equipment, conducted energy devices, and cloud-based storage subscription; and approved the Master Services and Purchasing Agreement with Axon to provide body worn cameras, associated equipment, and cloud-based storage subscription in an amount not-to-exceed $182,635.80 for the FY22-23 year, with a total not-to-exceed amount of $913,178.60 over the five-year term.

C9. Approve and Authorize the City Manager to Execute a Professional Services Agreement with Silicon Valley Independent Living Center for the Management of the Santa Clara County Emergency Food and Shelter Program (EFSP) Grant for the Rent Relief Program and Utility Assistance (Staff Contact: Sharon Goei, Building Safety and Housing Director, 408-586-3260)

Approved and authorized the City Manager to execute a Professional Services Agreement with Silicon Valley Independent Living Center for the management of the Santa Clara County Emergency Food and Shelter Program (EFSP) grant for the Rent Relief Program and utility assistance.

C10. Adopt a Resolution Making Findings and Determinations Under Resolution No. 9156 and Assembly Bill 361 for the Continuation of Virtual Meetings of the City Council and Legislative Bodies (Staff Contact: Michael Mutalipassi, City Attorney, 408-586-3040)

Adopted **Resolution No. 9165** making findings and determinations under Resolution No. 9156 and Assembly Bill 361 for the continuation of virtual meetings and legislative bodies.

C11. Designate the California Live Oak as the Official City Tree (Staff Contact: Renee Lorentzen, Director of Community and Recreation Services, 408-586-3409)

Approved the designation of the California Live Oak as the City Tree.

C12. Receive an Update on the Emergency Replacement of Two (2) Boilers and Install of a Temporary Heating System for the Public Works, Information Technology, and Police Department Building

and Determine that the Condition Continues to Constitute an Emergency (Staff Contact: Tony Ndah, Public Works Director, 408-586-2602)

Received an update on the emergency replacement of two boilers and the installation of a temporary heating system for the Public Works, Police, and Information Technology Department buildings; and (2) Determined by a unanimous vote that the condition continues to constitute an emergency.

C13. Award RFP No. 22-058 and Authorize the City Manager to Execute an Agreement for Abandoned Shopping Cart Retrieval Services with CityWide Cart Savers, LLC. for the Not-To-Exceed Amount of $112,500 for Fiscal Years 2022-2027 (Staff Contact: Sharon Goei, Building Safety and Housing Director, 408-586-3260, and Chris Schroeder, Purchasing Agent, 408-586-3161)

Item removed from Consent

C14. Approve and Authorize the City Manager to Execute Amendment No. 2 to the Animal Services Agreement with the City of San Jose (Staff Contact: Sharon Goei, Building Safety and Housing Director, 408-586-3260; Jason Earl Administrative Analyst II, 408-586-3294; and Chris Schroeder, Purchasing Agent, 408-586-3161)

Item removed from consent.

C15. Approve the Five-Year Cooperative Purchase Agreement with Waxie's Enterprises LLC for Janitorial Supply Purchases for the Not-to-Exceed Amount of $200,000.00 (Staff Contact: Tony Ndah, Public Works Director, 408-586-2602)

Approved and authorized the City Manager to enter into a Cooperative Purchasing Agreement with Waxie's Enterprises LLC for janitorial supply purchases for the not-to-exceed amount of $200,000.00.

PUBLIC HEARINGS

Members of the public may be allotted up to three (3) minutes or less at the Mayor's discretion, to comment on any public hearing item. Applicants/Appellants and their representatives may be allotted up to a total of ten (10) minutes for opening statements and up to a total of five (5) minutes maximum for closing statements. Items requested/recommended for continuance are subject to Council's consent at the meeting.

16. Open the Public Hearing and Adopt Resolutions to Approve the Fiscal Year 2022-23 Operating Budget for the City of Milpitas and the Milpitas Housing Authority, Approve the Fiscal Year 2022-23 Gann Appropriations Limit, Authorize Various Financial Actions, Fiscal Policies and Budget Guidelines, Amend the Classification Plan for Alignment with the FY 2022-23 Budget, the Minimum Wage Increase, and Salary Schedules Consistent with Previous Council Action Staff Contact: Lauren Lai, Finance Director, 408-586-3111)

Finance Director Lai presented the staff report.

Mayor Tran opened the public hearing.

The following people spoke:

1. Voltaire Montemayor

Mayor Tran closed the public hearing.

Mayor Tran requested the recommended limited term Public Works positions be made permanent.

Vice Mayor Montano commented on the contribution to youth sports and would like to include public speaking scholarships and a pilot program to expand the scholarship outside of City-run programs.

Council asked clarifying questions.

Human Resources Director Seher, Recreation and Community Services Director Lorentzen, and Public Works Director Ndah provided additional information.

Councilmember Phan left the Council Chamber and rejoined the meeting virtually.

After discussion, motion: to adopt a resolution of the City Council and Milpitas Housing Authority to approve the Fiscal Year 2022-23 Operating Budget the City of Milpitas and the Milpitas Housing Authority, approve the Appropriations Limit, Fiscal Policies and Budget Guidelines and authorizing various financial actions by the City Manager, including approving and authorizing the execution of various contracts and payments over $100,000; adopt a resolution amending Resolution No. 1626, the Classification Plan, to authorize additional positions and amend budgeted allocated positions; adopt a resolution amending Resolution No. 1626, the Classification Plan, to adjust the hourly rate ranges for classifications due to a minimum wage increase pursuant to Ordinance No. 292; adopt a resolution amending Resolution No. 1626, the Classification Plan, to approve the Salary Schedules for all IAFF, Mid-CON, PROTECH, MEA, Miscellaneous Unrepresented, and Police Unrepresented Classifications.

Motion/Second: Councilmember Dominguez / Councilmember Phan

After further discussion, substitute motion: to adopt **Resolution No. 9167** of the City Council and Milpitas Housing Authority to approve the Fiscal Year 2022-23 Operating Budget the City of Milpitas and the Milpitas Housing Authority, approve the Appropriations Limit, Fiscal Policies and Budget Guidelines and authorizing various financial actions by the City Manager, including approving and authorizing the execution of various contracts and payments over $100,000; Adopt **Resolution No. 9168** amending Resolution No. 1626, the Classification Plan, to authorize additional positions and amend budgeted allocated positions; Adopt **Resolution No. 9169** amending Resolution No. 1626, the Classification Plan, to adjust the hourly rate ranges for classifications due to a minimum wage increase pursuant to Ordinance No. 292; (d) Adopt **Resolution No. 9170** amending Resolution No. 1626, the Classification Plan, to approve the Salary Schedules for all IAFF, Mid-CON, PROTECH, MEA, Miscellaneous Unrepresented and Police Unrepresented Classifications with an ament to **Resolution No. 9168** section 2 (a) striking “(limited term),” directing staff to include public speaking scholarships and a pilot program for scholarships outside of City-run programs to the Grant Contributions for Youth Sports, and look at the increase of the Councilmember travel and training budget at the midyear budget.

Motion/Second: Mayor Tran / Vice Mayor Montano

Substitute motion carried by the following roll call vote:

AYES: Councilmembers Chua, Vice Mayor Montano, Mayor Tran

ABSTAIN: Councilmember Dominguez

NOES: Councilmember Phan

17. Conduct a Public Hearing and Introduce an Ordinance Amending Sections of Chapter 10, Title XI, and Sections of Chapter 100, Title V, of the Milpitas Municipal Code, Relating to Mobile Food Vending (Food Trucks) (Staff Contact: Ned Thomas, Planning Director, 408-586-3273)

Planning Director Thomas presented the staff report.

Mayor Tran opened the Public Hearing.

The following spoke:

1. Voltaire Montemayor

Mayor Tran closed the Public Hearing.

City Attorney Mutalipassi read the title of the Ordinance No. 38.845 "*An Ordinance of the City Council of the City of Milpitas Amending Sections of Chapter 10 Of Title Xi, and Amending Sections of Chapter 100 Of Title V, of the Milpitas Municipal Code, Relating to Mobile Food Vending and Making Findings of CEGA Exemption*."

Motion: to waive the first reading beyond the title and introduce **Ordinance No. 38.845** amending sections of Chapter 10 of Title XI, and sections of Chapter 100 of Title V, of the Milpitas Municipal Code relating to Mobile Food Vending and determine that the Municipal Code amendment is exempt from California Environmental Quality Act pursuant to CEQA Guidelines Section 15183 (Projects Consistent with a General Plan) and 15061(b)(3) (Common Sense Exemption).

Motion/Second: Vice Mayor Montano / Mayor Tran

Motion carried by the following roll call vote:

AYES: Councilmembers Chua, Dominguez, Phan, Vice Mayor Montano, Mayor Tran

NOES: None

ITEM REMOVED FROM CONSENT

C13. Award RFP No. 22-058 and Authorize the City Manager to Execute an Agreement for Abandoned Shopping Cart Retrieval Services with CityWide Cart Savers, LLC. for the Not-To-Exceed Amount of $112,500 for Fiscal Years 2022-2027 (Staff Contact: Sharon Goei, Building Safety and Housing Director, 408-586-3260, and Chris Schroeder, Purchasing Agent, 408-586-3161)

City Attorney Mutalipassi informed the Council of the options for this item.

Building Safety and Housing Director Goei provided additional information.

The following spoke:

1. Joseph DeMichele Director of CityWide Cart Savers, LLC
2. Milpitas resident

Director of CityWide Cart Savers, LLC, Joseph DeMichele stated they are withdrawing their solicitation for the RFP.

Motion: to postpone the item to the next meeting.

Motion/Second: Mayor Tran / Councilmember Dominguez

Motion carried by the following roll call vote:

AYES: Councilmembers Chua, Dominguez, Phan, Vice Mayor Montano, Mayor Tran

NOES: None

LEADERSHIP AND SUPPORT SERVICES

18. Adopt a Resolution Submitting to the Qualified Voters of the City of Milpitas a Measure Amending Chapter 400 (Mayoral and Councilmanic Term Limits) of Title 1 (Administration) of the Milpitas Municipal Code to Amend Term Limits on Mayoral and City Council Member Service, at a General Municipal Election to be Consolidated with the Statewide General Election to be Held November 8, 2022, and Setting Rules for Arguments and Rebuttals for and Against Said Measure (Staff Contact: Michael Mutalipassi, City Attorney, 408-586-3040 and Ashwini Kantak, Assistant City Manager, 408-586-3053)

City Attorney Mutalipassi presented the staff report.

Council discusses changing the proposed ballot measure language and asked if the question to the votes be revised to add "four-year"

Staff provided revised language.

City Attorney Mutalipassi recommended keeping the original language.

After discussion, motion: to adopt **Resolution No. 9171** submitting to the qualified voters of the City of Milpitas a measure amending Chapter 400 (Mayoral and Councilmanic Term Limits) of Title 1 (Administration) of the Milpitas Municipal Code to amend term limits on Mayoral and City Council Member Service, at a General Municipal Election to be consolidated with the Statewide General Election to be held November 8, 2022, and setting rules for arguments and rebuttals for and against said measure.

Motion/Second: Vice Mayor Montano/ Councilmember Chua

Motion carried by the following roll call vote:

AYES: Councilmembers Chua, Phan, Vice Mayor Montano, Mayor Tran

NOES: None

ABSENT: Councilmember Dominguez

19. Introduce an Ordinance of the City Council of the City of Milpitas Adding Section 3.5 ("Regulation Of Lobbying Activities") to Chapter 310 ("Open Government Ordinance"), of Title I ("Administration") of the Milpitas Municipal Code (The "Code") and Modifying Section I-310-3.160 of the Code. (Staff Contact: Michael Mutalipassi, City Attorney, 408-586-3040)

City Attorney Mutalipassi presented the staff report.

City Attorney Mutalipassi read aloud the title of Ordinance 312 "*An Ordinance of the City Council of the City of Milpitas Adding Section 3.5 ("Regulation Of Lobbying Activities") to Chapter 310 ("Open Government Ordinance"), of Title 1 ("Administration") of the Milpitas Municipal Code (The "Code") And Modifying Section I-310-3.160 of the Code.*"

Mayor Tran requested removing contingent compensation on page 16 section l of section I-310-3.5.130 (e).

The following spoke:

1. Voltaire Montemayor
2. Armando Gomez

After discussion, motion: to waive the reading beyond the title and introduce **Ordinance No. 312** adding Section 3.5 ("Regulation of Lobbying Activities") to Chapter 310 ("Open Government Ordinance"), of Title I ("Administration") of the Milpitas Municipal Code (the "Code") and Modifying Section I-310-3.160 of the Code with an amendment to remove l of section I-310-3.5.130 (e).

Motion/Second: Councilmember Dominguez / Councilmember Chua

Motion carried by the following roll call vote:

AYES: Councilmembers Chua, Dominguez, Phan, Vice Mayor Montano, Mayor Tran

NOES: None

Councilmember Dominguez left the meeting at 10:17 PM

20. Discuss the Formation of a City Council Ad Hoc Odor Reduction Subcommittee, Appoint the Subcommittee Members, and Provide Direction to Staff on Next Steps (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053 and Walter C. Rossmann, Deputy City Manager, 408-586-3012)

Deputy City Manager Rossmann presented the staff report.

The following spoke:

1. Voltaire Montemayor

Provided direction to meet once a month, with the stakeholder Newby Island operators, Zanker, the wastewater representatives, and the Bay Area Air Quality Management District and discusses the formation of a City Council Ad Hoc Odor Reduction Subcommittee, nominating Mayor Tran and Vice Mayor Montano to serve on the Subcommittee.

Motion: to appoint Mayor Tran and Vice Mayor Montano to serve as the Subcommittee members.

Motion/Second: Mayor Tran / Councilmember Chua

Motion carried by the following roll call vote:

AYES: Councilmembers Chua, Phan, Vice Mayor Montano, Mayor Tran

NOES: None

ABSENT: Councilmember Dominguez

ITEM REMOVED FROM CONSENT

C14. Approve and Authorize the City Manager to Execute Amendment No. 2 to the Animal Services Agreement with the City of San Jose (Staff Contact: Sharon Goei, Building Safety and Housing Director, 408-586-3260; Jason Earl Administrative Analyst II, 408-586-3294; and Chris Schroeder, Purchasing Agent, 408-586-3161)

Vice Mayor Montano asked a clarifying question.

Building Safety and Housing Director Goei provided additional information.

The following spoke:

1. Voltaire Montemayor

Motion: to approve and authorize the City Manager to execute Amendment No. 2 to the Agreement with the City of San Jose for Animal Services, adding a second one-year extension to the three-year agreement, increasing the total not-to-exceed amount by $510,000 from $1,628,211 to $2,138,211, subject to annual appropriation of funds.

Motion/Second: Vice Mayor Montano / Councilmember Chua

Motion carried by the following roll call vote:

AYES: Councilmembers Chua, Phan, Vice Mayor Montano, Mayor Tran

NOES: None

ABSENT: Councilmember Dominguez

ADJOURNMENT

Mayor Tran took a moment of silence in memory of the victims of the recent mass shootings and adjourned the meeting at 10:41 PM.

Draft meeting minutes submitted by City Clerk, Wendy Wood

Item # C2.

SPECIAL MEETING OF THE MILPITAS CITY COUNCIL

AGENDA

TUESDAY, JUNE 7, 2022
CITY COUNCIL CHAMBERS, 455 E CALAVERAS BLVD, MILPITAS, CA
5:30 PM (CLOSED SESSION)
OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION

The City Council of the City of Milpitas convened for a Special City Council meeting on June 7, 2022, at 5:30 PM in the City Council Chamber at City Hall, 455 E. Calaveras Blvd., Milpitas, and via teleconference/Zoom webinar.

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

Mayor Tran called the Special City Council meeting to order at 5:30 PM. Roll Call was taken by City Clerk Wood.

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

ABSENT: None

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Tran.

ADJOURN TO CLOSED SESSION

(a) CONFERENCE WITH LABOR NEGOTIATORS
Pursuant to Government Code Section 54957.6
Agency designated representative: Jeannine Seher, Human Resources Director
Bargaining Units: LIUNA, UPEC (Mid-Con, Pro-Tech, MEA)

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.

City Attorney Mutalipassi reported out that Council unanimously gave direction to Staff.

PUBLIC FORUM
Those interested are invited to address the City Council on the agenda item listed below only, by using the "raise hand" in the zoom webinar online (see instructions on page 1). Speakers may state their name and city of residence for the record, and limit spoken remarks to three minutes, or less, at the discretion of the Mayor.

There were no speakers.

ANNOUNCEMENT OF CONFLICT OF INTEREST

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

READING OF THE CITY COUNCIL CODE OF CONDUCT

Mayor Tran read the Code of Conduct.

APPROVAL OF AGENDA

Motion: to approve the June 7, 2022, Special Meeting agenda.

Motion/Second: Mayor Tran / Councilmember Chua

Motion carried by the following:

AYES: Councilmembers Chua, Dominguez, Phan, Vice Mayor Montano, Mayor Tran

NOES: None

AGENDA ITEMS

1. 2023-2031 Housing Element Update (Staff Contact: Sharon Goei, Building Safety and Housing Director, 408-586-3260, and Hanson Hom, Senior Special Projects Associate)

Building Safety and Housing Director Goei introduced the item and consultants Eric Yurkovich and Veronica Tam from Rami and Associates presented the Housing Element Update.

Council receive a presentation on the 2023-2031 Housing Element and provided the following feedback:

Mayor Tran commented on having a higher level of affordability and opportunity for redevelopment by the BART station and light rail.

Councilmember Phan requested using the funding and resources with a Pro Housing Designation as designated by the Department of Housing and Community Development and commented on key elements to obtain the designation. He reviewed some of the scoring criteria by which to qualify and commented on the following items to receive the Pro Housing Designation: permitting missing middle housing uses, eliminating or reducing parking requirements, accelerating production timeframes, documented process of streamlining housing development, priority permitting process for ADUs (Accessory Dwelling Units), multifamily and affordable housing, reducing the construction and development cost, allowing impact fee waivers, promoting innovative housing types that reduce costs, reducing transportations infrastructure costs, pre-approve or prototype plans for missing middle housing types, providing financial subsidies, local housing trust funds through the Housing Authority, ADU grant and low interest loan programs, land donation through a surplus land program, and enhanced infrastructure financing districts. He also cited partnering with the job feeders in the region to create public private partnerships to try get funding for housing.

Councilmember Dominguez commented on concerns with the inventory of vacant homes and would like staff to research other cities in regard to vacant homes and explore the possibility of charging a fee that could go into the affordable housing fund. She would like to explore a pilot program to link students and seniors to existing extra rooms or ADUs. She would also like to maximize left-over land, being intentional with what plans go in, making sure they have the transit element, and ensure families in Milpitas have a chance to live in those units. She commented on providing opportunities for first time home buyers and exploring school district land to develop educator housing on district properties.

Councilmember Chua commented on doing a self-evaluation on how the City can expedite the application, inspection, and approval process. She also commented on having a balance between the housing and commercial/industrial.

ADJOURNMENT

Mayor Tran adjourned the special meeting at 7:05 PM.

Draft meeting minutes submitted by City Clerk, Wendy Wood

MILPITAS CITY COUNCIL
AGENDA PREVIEW LIST

August 9, 2022

CLOSED SESSION

INVOCATION (assigned to Councilmember Phan)

PRESENTATION

CONSENT CALENDAR

1. Receive City Council calendar for August 2022 (City Clerk)

2. Approve City Council Regular Meeting minutes of June 21, 2022 (City Clerk)

3. Preview list of items for August 16, 2022 (City Clerk)

4. Councilmember Request List (City Clerk)

5. Reconfirm Findings and Determinations Under Resolution No. 9156 and Set Forth in Assembly Bill 361 for the Continuation of Virtual Meetings of the City Council and Legislative Bodies (Michael Mutalipassi)

PUBLIC HEARING

6. Conduct Public Hearing for 2021 Weed Abatement Assessments and Adopt a Resolution to Confirm the Assessment Report (Arthur Belton)

7. First Reading of Maximum Building Heights Zoning Ordinance Amendment (Ned Thomas)

8. First reading of Outdoor Music Ordinance (Ned Thomas)

9. Adopt a Resolution to Adopt the Climate Action Plan Update and the Addendum to the General Plan Environmental Impact Report (Elaine Marshall)

10. Adopt a Resolution to Adopt the Milpitas Water, Sewer, and Storm Master Plans and Addendum to the Environmental Impact Report for the Milpitas General Plan (Tony Ndah)

COMMUNITY DEVELOPMENT

11. Discussion about Housing Opportunity Zones

COMMUNITY SERVICES

PUBLIC SAFETY

LEADERSHIP

12. Update to the Commission Handbook

REPORTS

MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS

			NOTE: Deferred and completed items are not listed		
2022	**OPEN**				
Request No.	**Topic**	**Submitted by:**	**A, F, CM, or CCM**	**Date requested or Rec'd Form**	**STATUS and/or DATE scheduled on City Council meeting agenda:**
1	Waive fees for family fundraiser at Milpitas Skate Park	Dominguez	A	6/14/2022	
2	Agendize a Flag Raising for India Independence Day	Tran	A	6/14/2022	Item added to 6/21/22 Consent Calendar
3	Establish a SPAR fund modelled after the City of Mountain View - sets asides moneys for opportunities to buy real estate	Montano	A	6/7/2022	Item will be brought forward as part of the next City Council additional workplan items prioritization in August/September
4	Memorial Plaque in honor of youth skateboarder that passed away	Montano	A	6/7/2022	Item will be brought forward as part of the next City Council additional workplan items prioritization in August/September
5	Staff provide and explain the Project Homekey Management Manual, see if the MOU is being followed including forming an oversight committee, and explore with County to have check-ins of the units. Dominguez indicated it could be included in Council Member Chua's recommendation. Mayor requested to include County in discussion.	Dominguez	A	6/7/2022	Item will be agendized for August City Council meeting and combined with item 6
6	Quarterly or Monthly crime statistics on Homekey Project	Chua	A	6/7/2022	Mayor asked to bring back a presentation from PD at the second meeting in August

MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS

7	Funding to hire a consultant for the Sunnyhills Historical Designation on a state level	Tran	A	6/7/2022	Request will be included with the Historic Resources Master Plan project approved as part of the 2023-2027 Capital Improvement Program.
8	Local Boy Scouts Fee Waiver for Eagle Scout Ceremony	Tran	A	6/7/2022	Staff will agendize a fee waiver request for Council consideration for the first meeting in August.
9	Letter from City Council opposing AB 2181 (Berman) regarding VTA's Board Composition	Tran	A	6/7/2022	Per the email sent to Council on 6/17/2022, consistent with the Council approved Legislative Advocacy Policy, Mayor Tran signed a letter opposing the legislation unless amended.
10	Prepare Vision Zero Action Plan	Tran	A	6/7/2022	Item will be brought forward as part of the next City Council additional workplan items prioritization in August/September
11	Explore increasing the Conferences/Meetings/Memberships allowance for each Councilmember to $10,000	Chua	A	5/17/2022	On 6/07/22, City Council did not approve increasing the allowance as part of the adoption of the FY 2022-23 Budget; however, Council provided direction to review funding need as part of the FY 2022-23 mid-year budget review.
12	Requested the City create a youth scholarship fund for under privileged kids to play sports	Montano	A	5/17/2022	2022-23 Budget, the City Council allocated $20,000 for this program. Staff will bring forward a policy framework for this program for
13	Science, Technology, and Innovation Commission agendize and explore a comprehensive internet connectivity plan.	Tran	A	5/3/2022	Item will be agendized for discussion at June STI Commission meeting
14	Consider policies to regulate automated equipment that would replace a position typically filled by an employee.	Phan	A	4/19/2022	Item will be brought forward as part of the next City Council additional workplan items prioritization in August/September
15	Explore the use of roundabouts as a traffic calming mechanism	Dominguez	A	4/19/2022	Item will be brought forward as part of the next City Council additional workplan items prioritization in August/September

MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS

16	Explore the policy for locking mechanisms on shopping carts for large commercial businesses and would like it brought back to Council sometime in August, September, or October	Tran	A	4/19/2022	Item will be brought forward as part of the next City Council additional workplan items prioritization in August/September
17	Have staff prepare a report on ghost guns in the City of Milpitas and look at any State bills that the Council should be aware of to write a letter of support; tie it into the gun's buyback program to add a further incentive for the ghost guns	Dominguez; Tran	A	4/5/2022	Item will be brought forward as part of the next City Council additional workplan items prioritization in August/September. At the gun buyback event held on May 22, 2022, ghost guns were bought back for $200 vs. handguns and rifles for $100.
18	Explore an ordinance or policy for parking areas in Milpitas to reduce thefts and increase security in the commercial retail areas	Chua	A	4/5/2022	Item will be brought forward as part of the next City Council additional workplan items prioritization in August/September
19	Request for Crossing Guards at McCandless and Montague Expressway and review wages for Crossing Guards	Montano	A	4/5/2022	Per the Information Memorandum issued on June 13, the City will perform school aged pedestrian counts around schools in the City including the McCandless and Montague Expressway intersection at the beginning of the 2022-23 school year and report the findings to the Transportation Subcommittee late fall.
20	Consider funding to implement and create a homelessness encampment response team to be dispatched to encampment sites to address concerns, talked about creating a position to provide mental health assistance, and would like this to be brought back for discussion at the budget meeting	Dominguez	A	3/15/2022	Direction from Council to bring forward as part of FY 22-23 budget discussion; at the May 10 Budget Study Session Council did not direct to do any further work on this item.
21	Consider expanding the Fee Waiver Policy eligibility to non-profit organizations outside of Milpitas but the events are specific to Milpitas residents	Chua	A	3/15/2022	Scheduled for Council consideration for the June 21 2022 City Council meeting.
22	Designate the California Oak Tree as the City's official heritage tree	Montano	A	2/1/2022	Council approved at the 6/7/2022 meeting.

MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS

23	Host a Town Hall at City Hall in January, February, and March for the community to share comments about the issue of the unhoused.	Tran	A	11/2/2021	This item was postponed by Mayor Tran due to the Omicron variant and a rise in COVID-19 cases

ACTIVE

	Topic	Submitted by:	A, F, CM, or CCM	Date requested or Rec'd Form	STATUS and/or DATE scheduled on City Council meeting agenda:
24	Bring back a conversation in the budget meeting to fund “walking beats” in the commercial and high crime areas	Dominguez	A	4/5/2022	At the 4/5/2022 City Council meeting, this item was discussed and there was direction from Councilmember Dominguez to work with the City Manager to find funding sources
25	Create a plan for future solar paneling at City facilities	Montano	A	3/1/2022	Discussed at Spring Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward at the 5/03/2022 meeting; Discussed at the May 10 budget meeting and approved funding of $25,000 in the 2022-23 budget
26	Fee waiver for the Filipino American South Bay Community to hold pop-up resource fair at a City Park	Dominguez	A	3/1/2022	Staff has engaged with representatives of the organization to identify potential eligibility avenues such as partnering with a Milpitas based non-profit organization consistent with the Policy.

MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS

27	Agendize an update to the Lobbyist Ordinance for the next meeting	Chua	A	3/1/2022	Discussed at 3/15 City Council Meeting; At the 3/15/2022 Council Meeting, City Attorney was directed to bring back a proposed ordinance amendment for further discussion; proposed ordinance scheduled for 6/7/2022
28	Requested the City Attorney's office explore encampment ordinances form the City of Oakland, Los Angeles, or other regional cities and would like a discussion on the existing policies to be brought back before the July recess.	Tran	A	2/15/2022	4/19/2022 direct the City Attorney to make the recommended changes to the Municipal Code to remove and prohibit property in public
29	Evaluate reopening the childcare center with a non-profit organization running the center	Montano	A	2/1/2022	Discussed during Spring Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward at the 5/03/2022 meeting
30	Requested an appropriation in an amount not to exceed $250,000 to procure a contract to address the streetlights that are pending fieldwork.	Tran	A	2/1/2022	At this time, staff has sufficient Council approved resources to address the remaining streetlight outages; however, will bring relevant actions for Council consideration, if needed.
31	Explore a lease for the vacant land adjacent to the Library for City use	Tran	A	1/18/2022	Discussed at Spring Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward at the 5/03/2022 meeting;
32	Requested that staff study the placement of a City sign for the Milpitas Police Department and explore the cost of a new sign	Dominguez	A	1/18/2021	Staff has been working on upgrading signage and landscaping around the Police Department and Public Works Building.
33	Request for the City to make the temporary third-party food deliver fee caps permanent and add additional provisions for enforcement	Phan	A	11/16/2021	Discussed at Spring Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward at the 5/03/2022 meeting

MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS

34	Staff to look into mural Art on Great Mall Parkway on the VTA owned Light rail pillars	Montano	A	11/16/2021	Discussed at Spring Quarterly City Council Workplan Items Prioritization Discussion; Approved at the 5/03/2022 meeting; discussed funding at the 5/10/2022 budget meeting and approved $100,000 of funding for one one site
35	Have a picture of Albert Vogel Sr. put up in the Senior Center	Montano	A	10/19/2021	Approved to move forward at the 1/11/2022 Council meeting; Staff engaged the artist of the existing mural regarding this Council approved item.
36	Requested an agenda item on November 2 Council meeting allowing the Council to rescind direction given to 1355 California Circle and include direction to allow the project application to move forward without being tied to a specific plan	Chua	A	10/19/2021	At the 1/18/2022 council meeting, Council voted 4-1 to rescind the direction and direct staff and the application to explore option one in the presentation to amend the General Plan and remove Council policy for the preparation of a Specific Plan
37	Requested staff work with the Vice Mayor and Mayor to explore and discuss building height limits near the hillside by January 2022	Tran	A	9/21/2021	Approved to move forward at the 1/11/2022 Council meeting; l scheduled for 6/21/2022
38	Requested the City extend the outdoor dining options through March of next year	Phan	A	9/21/2021	Planning Director to provide information on current outdoor dining extension
39	Work with the school district to have a contest to create art murals for the pillars on Main Street	Montano	A	9/7/2021	Approved to move forward at the 1/11/2022 Council meeting
40	Partner with the Rotary Club of Silicon Andhra to promote the stem cell donor outreach with a webinar and campaign to help increase the number of donors	Chua	A	8/17/2021	Staff will include the stem cell donor information in regularly scheduled wellness event
41	Include a bust of Maria Lemire on the Mural in front of the Senior Center	Montano	A	8/17/2021	Approved to move forward at the 1/11/2022 Council meeting; Staff engaged the artist of the existing mural regarding this Council approved item.
42	City to highlight mental health resources on the website	Dominguez	A	8/17/2021	Staff will issue an Email

MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS

43	Look into allowing outdoor music and would like the ordinance brought back to Council.	Montano	A	8/5/2021	Approved to move forward at the 1/11/2022 Council meeting; scheduled for 6/21/2022
44	Look into opening up the Senior Center on Saturdays for half a day	Chua	A	8/5/2021	As presented by staff on 1/11/2022, this pilot is scheduled for completion in fall 2022. In preparation for the pilot, staff will issue a survey to seniors asking for the types of services they are seeking; hire staff based on the feedback; and start the three-month pilot in September 2022.
45	Look into bringing back a roller rink	Montano	A	8/5/2021	Approved to move forward at the 1/11/2022 Council meeting. Funding for the program will need to be prioritized through the FY 22-23 budget process; Discussed at 5/10/2022 budget meeting and approved $100,000 funding for a two-day event in 2023
46	Look into how the City can be a resource for small businesses to help guide them on what to do in terms of ADA (Americans with Disabilities Act) requirements due to the quick changes made to facilities during the pandemic	Chua	A	8/5/2021	SVEDA/SV Joint Venture hosted the “SV Small Businesses & ADA Compliance” webinar on 11/3/21. Several Milpitas business reps, & staff from Econ. Dev. & Building participated. Staff met with reps from CA Comm. on Disability Access to discuss business education & outreach.
47	Discussion in the next fiscal year, to have a sliding scale permitting program for seniors and low-income residence for necessary safety renovations	Tran	A	5/4/2021	8/09/2021 Council voted 5-0 to move this item forward and modify the existing Milpitas Assistance program to include seniors; Staff will bring this item for funding consideration as part of the FY 2022-23 budget process
48	Discussion to reduce the City’s Senior Center facilities deposit	Montano	A	5/4/2021	8/09/2021 Council voted 5-0 to refer this item as part of the development of the FY 2022-23 Master Fee Schedule; Will be brought forward on 4/19 as part of Master Fee Schedule discussion

MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS

49	Requested that the City have mini-libraries in the low-income areas of the City.	Montano	A	4/20/2021	8/09/2021 Council voted 3-1-1 to move this item forward, staff to follow up with Vice Mayor Montano on specific vision. Staff met with the Vice Mayor. The City will continue to facilitate libraries as needed but will not take a lead role in funding or operating them.
50	Staff to create a plan on how to increase the number of local businesses doing business with the City	Chua	A	4/6/2021	At 8/9/2021 Council meeting, Council voted that this item may have to come back for additional discussion because there may be some legal considerations.
51	Staff to look into creating a rose garden with a children's memorial site	Montano	A	4/6/2021	8/09/2021 Council voted 4-1 to discuss details with Vice Mayor Montano and refer this item as part of the development of the 2023-2027 CIP; The funding for this project will be included in the 2023-2027 Capital Improvement Program scheduled for adoption on May 3, 2022. Discussed at the May 3 meeting funding was reallocated to the Softball Field project
52	Staff to look into creating "Welcome to Milpitas" signs in key areas of in the City	Montano	A	4/6/2021	8/09/2021 Council voted 5-0 to move this item forward and Council provided direction that the signs should align with the efforts currently underway with the Metro Plan and Main Street Gateway Specific Plan process and work with private development. Staff was directed to work with Vice Mayor on additional clarification. In November, Vice Mayor Montano noted a preference for a location on South Main Street. This project will be added to unfunded project list of the 2023-2027 CIP to allow time for staff to research potential grant funding and outreach to local business and service clubs.

MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS

53	Staff to provide information to place a measure on the ballot to change the directly elected Mayor to a rotational at-large position	Tran	CCM	3/16/2021	To be brought forward in Spring of 2022, once new City Attorney is in place; scheduled for 3/15/2022; rescheduled for 4/05/2022; discussed at the May 10 budget meeting and had a consensus that they did not want to move forward with a Mayoral ballot measure
54	Staff to provide information on a landmark policy for the City of Milpitas	Tran	A	3/16/2021	8/09/2021 Council voted 5-0 to move this item forward; this item will be included for funding consideration in the development of the FY 2023-27 CIP for assessment of historical and cultural resources and development of landmark policy; The funding for the assessment of historical and cultural resources and development of a landmark policy will be included in the 2023-2027 Capital Improvement Program scheduled for adoption on May 3, 2022. This project will be scheduled to begin in FY 2022-23.
55	Amendment to the existing ordinance for third-party food delivery vendor services to prohibit regulatory response fees	Phan	A	2/16/2021	Agendized for discussion on 3/16/2021, deferred to 4/06/2021; CC direction for City Attorney to prepare a report; At the 11/12/2021 Transportation Subcommittee, the Subcommittee directed to bring back this request to Council as part of the FY 2022-23 budget process.
56	Ordinance to ban vaping in the City	Montano	A	12/15/2020	Ordinance regarding a ban on use in certain areas adopted by Council on 6/15/2021. Policy related to access to products will be brought forward in Spring 2022
57	Review City policy on speed bumps	Tran	A	12/15/2020	Presented to Transportation Subcommittee on 02/12/2021;voted on 3/16/2021 to revisit this item; Scheduled for April 8, 2022 Transportation Subcommittee Meeting

MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS

58	Consider change in term limits for Mayor + Councilmembers	Montano	A	6/16/2020	8/4/2020: Voted 3 -2 to pursue; 2/02/2021 to agendize for a future meeting; 3/16/2021 voted 3-1-1 to move forward. Scheduled for 3/15/2022; rescheduled for 4/05/2022; 4/05/2022 could gave direction to move forward with Councilmember term limits and discuss the Mayoral seat at a later date; Discussed at the 5/10/2022 budget meeting and had a consensus not want to move foward with a ballot measure for the Mayor term limit; Councilmember term limits scheduled for June 7; Scheduled for June 21

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Authorize the City Manager to Accept CalRecycle Grant of $107,661 and Approve Related Budget Amendment (Elaine Marshall, Deputy Public Works Director, 408-586-2603)**
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	6/14/2022
	Recommendation: Authorize the City Manager to accept grant funding from CalRecycle's One-Time Senate Bill 1383 Local Assistance Grant and approve related budget amendment for revenues in the amount of $107,661 for the Solid Waste Fund (Fund 280) for FY 2021-22.

BACKGROUND:
In January 2022, the Department of Resources Recycling and Recovery (CalRecycle) provided a non-competitive one-time Senate Bill 1383 (SB 1383) Local Assistance Grant Program. The grant is to assist local jurisdictions with SB 1383 implementation and is able to be used for specific activities, such as capacity planning, collection, edible food recovery, education and outreach, enforcement and inspection, program evaluation/gap analysis, procurement, and record keeping during the grant period. Through this grant, CalRecycle made $57,000,000 available to all California jurisdictions/entities. The grant funds are based on population.

ANALYSIS:
Staff applied for the SB 1383 Local Assistance Grant in February 2022, as authorized by Council Resolution No. 9119 (Attachment 1). At the end of April, CalRecycle notified the City was awarded $107,661 in one-time grant funds. The funding will be used to offset budgeted personnel (enforcement and inspection of SB 1383) and non-personnel expenses to be used for SB 1383 tracking, monitoring, and record keeping software.

POLICY ALTERNATIVE(S):

Alternative 1: Do not accept the grant funds.

Pros: None.

Cons: The City will fund the costs of implementing SB 1383 through the City's Solid Waste Fund and not leverage funding from CalRecycle's SB 1383 Local Assistance One-Time grant.

Reason for Not Recommending: It is in the City's interest to leverage external funding to offset City costs when feasible.

FISCAL IMPACT:
Budgeted expenditures (personal services and non-personal services) totaling of $107,661 related to implementation of Senate Bill 1383 will be offset with the CalRecycle grant. To recognize the grant funding, staff recommends increasing the revenues for the Solid Waste Fund (Fund 280) in the amount of $107,661 in FY 2021-22.

California Environmental Quality Act (CEQA):
Not applicable.

RECOMMENDATION:

Accept grant funding from CalRecycle's One-Time Senate Bill 1383 Local Assistance Grant and approve budget amendment for revenues in the amount of $107,661 in the Solid Waste Fund (Fund 280) for FY 2021-22.

Attachment(s):

1. Resolution No. 9119
2. Budget Change Form

RESOLUTION NO. 9119

A RESOLUTION OF THE CITY OF MILPITAS AUTHORIZING SUBMITTAL OF APPLICATION(S) FOR ALL CALRECYCLE GRANTS FOR WHICH THE CITY OF MILPITAS IS ELIGIBLE

WHEREAS, Public Resources Code sections 48000 et seq. authorize the Department of Resources Recycling and Recovery (CalRecycle) to administer various grant programs (grants) in furtherance of the State of California's (state) efforts to reduce, recycle and reuse solid waste generated in the state thereby preserving landfill capacity and protecting public health and safety and the environment; and

WHEREAS, in furtherance of this authority CalRecycle is required to establish procedures governing the application, awarding, and management of the grants; and

WHEREAS, CalRecycle grant application procedures require, among other things, an applicant's governing body to declare by resolution certain authorizations related to the administration of CalRecycle grants.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Milpitas authorizes the submittal of application(s) to CalRecycle for all grants for which the City of Milpitas is eligible; and

BE IT FURTHER RESOLVED that the City Manager, or his/her designee is hereby authorized and empowered to execute in the name of the City of Milpitas all grant documents, including but not limited to, applications, agreements, amendments and requests for payment, necessary to secure grant funds and implement the approved grant project; and

BE IT FURTHER RESOLVED that these authorizations are effective for five (5) years from the date of adoption of this resolution.

PASSED AND ADOPTED this 15th day of February, 2022, by the following vote:

AYES:	(5) Mayor Tran, Vice Mayor Montano, Councilmembers Chua, Dominguez, and Phan
NOES:	(0) None
ABSENT:	(0) None
ABSTAIN:	(0) None

ATTEST:

Wendy Wood, City Clerk

APPROVED:

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From*		To*	
	Account	Amount	Account	Amount
Check one: ☐ **Budget Appropriation** ☐ **Budget Transfer**	**280-3564**	**$107,661**	**280-2909**	**$107,661**

Authorize the City Manager to accept grant funding from CalRecycle's One-Time Senate Bill 1383 Local Assistance Grant and approve revenue in the amount of $107,661 for the Solid Waste Fund (Fund 280) for FY 2021-22.

Background:
In January 2022, the Department of Resources Recycling and Recovery (CalRecycle) provided a non-competitive one-time Senate Bill 1383 (SB 1383) Local Assistance Grant Program. The grant is to assist local jurisdictions with SB 1383 implementation and is able to be used for specific activities, such as capacity planning, collection, edible food recovery, education and outreach, enforcement and inspection, program evaluation/gap analysis, procurement, and record keeping during the grant period. Through this grant, CalRecycle made $57,000,000 available to all California jurisdictions/entities. The grant funds are based on population.

Analysis:
Staff applied for the SB 1383 Local Assistance Grant in February 2022, as authorized by Council Resolution No. 9119 (Attachment 1). At the end of April, CalRecycle notified the City was awarded $107,661 in one-time grant funds. The funding will be used to offset budgeted personnel (enforcement and inspection of SB 1383) and non-personnel expenses to be used for SB 1383 tracking, monitoring, and record keeping software.

Policy Alternative:
Alternative 1: Do not accept the grant funds.

Pros: None.

Cons: The City will fund the costs of implementing SB 1383 through the City's Solid Waste Fund and not leverage funding from CalRecycle's SB 1383 Local Assistance One-Time grant.

Reason for Not Recommending: It is in the City's interest to leverage external funding to offset City costs when feasible.

Fiscal Impact:
Budgeted expenditures (personal services and non-personal services) totaling of $107,661 related to implementation of Senate Bill 1383 will be offset with the CalRecycle grant. To recognize the grant funding, staff recommends increasing the revenues for the Solid Waste Fund (Fund 280) in the amount of $107,661 in FY 2021-22.

California Environmental Quality Act:
Not applicable.

Recommendations:
Accept grant funding from CalRecycle's One-Time Senate Bill 1383 Local Assistance Grant and approve revenue in the amount of $107,661 in the Solid Waste Fund (Fund 280) for FY 2021-22.

Attachments:
1. Resolution No. 9119
2. Budget Change Form

☐ **Check if City Council Approval required.** **Meeting Date**: June 14, 2022

Requested by:	**Department Head:** Tony Ndah	**Date:** June 14, 2022
Reviewed by:	**Finance Director:** Lauren Lai	**Date:** June 14, 2022

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:	**Approve and authorize the City Manager to execute a Stormwater Management Facilities Operation and Maintenance Agreement for Milpitas Town Center 2008 LP for the Chick-fil-A project at 755 East Calaveras Boulevard. (Staff Contact: Steve Erickson, 408-586-3301)**
Category:	Consent Calendar-Community Development
Meeting Date:	6/21/2022
	Recommendation: Approve and authorize the City Manager to execute a Stormwater Management Facilities Operation and Maintenance Agreement for Milpitas Town Center 2008 LP for the Chick-fil-A project at 755 East Calaveras Boulevard.

Background:
On June 24, 2020, the Planning Commission approved a Site Development Permit (SD19-0009) and Conditional Use Permit (UP19-0010) to allow the construction of a new 4,999 square foot commercial restaurant building with a drive-through facility, a new trash enclosure and associated offsite and onsite improvements, landscaping, irrigation and storm water treatment measures on 1.13 acres of land located at 755 East Calaveras Boulevard, and the project property is owned by Milpitas Town Center 2008 LP (Property Owner).

In accordance with State Law and the City's Municipal Regional Stormwater NPDES Permit ("MRP") issued by the Regional Water Quality Control Board ("RWQCB"), new development and redevelopment projects that create and/or replace 10,000 square feet or more of impervious surface are required to incorporate Low Impact Development ("LID") post construction stormwater control measures into the project. LID control measures include, for example, bioretention areas, flow-through planters, permeable pavement, infiltration trenches and tree well filters.

Analysis:
MRP section C.3.h.ii.(1)(a) and Milpitas Municipal Code Title XI Chapter 16 require development project property owners meeting the 10,000 square foot threshold to execute and record a Stormwater Management Facilities Operation and Maintenance Agreement ("Agreement") **(Attachment 1)** with the City for the perpetual operation, maintenance, and annual inspection of LID stormwater treatment facilities installed with the project.

The Chick-fil-A Project constructed stormwater Bio-treatment devices and the Property Owner will be responsible for the perpetual maintenance and operation of the bio-treatment areas specified in Agreement. The Property Owner has complied with the LID requirements and has executed the required Agreement, which has been reviewed by the City Attorney as to form and by the City Engineer as to content.

Policy Alternatives:

Alternative 1:
Not approve the Agreement with the City for operation, maintenance and annual inspection of stormwater treatment facilities.

Pros: None

Cons: Not approving the Agreement would cause the project to be not in compliance with the conditions of development and the City's Municipal Code and would be prohibitive by federal and state law.

Reason not recommended: To comply with federal and state law and to allow for the on-going maintenance and City annual inspection of the installed stormwater Bio-treatment devices, staff recommends approval of the Agreement.

Fiscal Impact:
As required by the Stormwater Management Facilities Operation and Maintenance Agreement, the Project Developer/Owner will pay the City for the required annual inspections of the installed stormwater Bio-treatment facilities which are not owned or maintained by the City.

California Environmental Quality Act:
Approval of the Stormwater Management Facilities Operation and Maintenance Agreement implements the operation and maintenance of this project's constructed on-site stormwater facilities for which CEQA review had been exempted through the City Council's adoption of Resolution No. 20-006.

Recommendation:
Approve and Authorize the City Manager to execute a Stormwater Management Facilities Operation and Maintenance Agreement with Milpitas Town Center 2008 LP for the Chick-fil-A Project at 755 East Calaveras Boulevard.

Attachments:
1. Stormwater Management Facilities Operation and Maintenance Agreement
2. Exhibit B – Stormwater Management Plan

Recording Requested by
and when Recorded, return to:

CITY OF MILPITAS
455 E. CALAVERAS BOULEVARD
MILPITAS, CA 95035-5479

Attn: City Clerk

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

Document Transfer Tax is $ __0__
( ) Computed on full value of property conveyed
( ) Computed on full value less value of liens and encumbrances remaining
City transfer tax is $ __0__
APN: 028-12-013

STORMWATER MANAGEMENT FACILITIES
OPERATION AND MAINTENANCE AGREEMENT

This Stormwater Management Facilities Operation and Maintenance Agreement ("AGREEMENT") is made and entered into this _____ day of _____ 2022 ("Effective Date"), by and between Milpitas Town Center 2008 LP, a California limited partnership ("Property Owner") and the City of Milpitas, a municipal corporation of the State of California ("City").

RECITALS

This AGREEMENT is made and entered into with reference to the following facts:

A. **WHEREAS**, the Property Owner is the owner of real property more particularly depicted and described on the attached as **Exhibit A** ("Property") and fully incorporated herein by reference; and

B. **WHEREAS**, the Property Owner received entitlements from the City allowing the development of the Property, including the construction of a new restaurant with drive-through, utilities, and associated offsite and onsite improvements landscaping, irrigation, and stormwater treatment measures on a __0.56__ acre site located at ____755 East Calaveras Boulevard_____ in Milpitas and more commonly known as __Chick fil-A _____, Project Nos. PJ_5077__, (the "Project") on the Property; and subject to conditions set forth in the following (collectively "City Approvals"):

1. Resolution No. __20-006___ approving Site Development Permit No. SD19-0009___,

2. Resolution No. 20-006 approving Conditional Use Permit No. UP19-0010

C. **WHEREAS**, discharges to the City's municipal separate storm sewer system ("MS4") are regulated under state and federal law pursuant to Waste Discharge Requirements and National Pollutant Discharge Elimination System permit ("MS4 Permit") issued by the Regional Water Quality Control Board, San Francisco Region ("Regional Board").

D. **WHEREAS**, pursuant to the requirements of the MS4 Permit and the City's Stormwater and Urban Runoff Pollution Control Ordinance as codified in Milpitas Municipal Code Chapter 16 ("Ordinance"), the City Approvals require the Property Owner to install, operate and maintain, at no cost or expense to the City, the Permanent Stormwater Pollution Prevention Measures ("BMPs") more particularly described in the City-approved Stormwater Control Operation and Maintenance Plan (sometimes referred to herein as "Plan") for the Project attached hereto as **Exhibit B** and fully incorporated herein by reference; and

E. **WHEREAS**, the Stormwater Control Operation and Maintenance Plan may be subsequently modified from time to time with City's written approval and such changes shall be fully incorporated as part of this Agreement by this reference; and

F. **WHEREAS**, the Stormwater Control Operation and Maintenance Plan includes provisions for the BMP Operation and Maintenance and an annual inspection checklist for the BMPs constructed on the Property, and

G. **WHEREAS**, this Agreement memorializes the Property Owner's maintenance, operations, and inspection obligations under the City's Ordinance and the approved Stormwater Control Operation and Maintenance Plan.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

SECTION 1. Responsibility for Operation and Maintenance:

The Property Owner, at its sole cost and expense, shall construct and install the BMPs shown in Exhibit B in accordance with the plans approved by and on file with the City. Property Owner shall diligently maintain in perpetuity the BMPs in a manner assuring peak performance at all times, shall make such changes or modifications to the BMPs, subject to City's prior approval as may be reasonably necessary for the BMPs to continue to operate as designed and approved and to accomplish its intended purpose and in good repair, and in compliance with all applicable Federal, State, County and local laws and regulations, including but not limited to the Ordinance, as the same may be amended, revised, and/or replaced from time to time. The Owner shall be responsible for the costs incurred in operating, maintaining, repairing and replacing the BMPs. Property Owner shall not destroy or remove the BMPs or modify any measure in any manner that would lessen its effectiveness. Property Owner shall make available copies of the approved Stormwater Control Operation and Maintenance Plan at the site with the facility or property manager.

SECTION 2: Inspection by Property Owner:

The Property Owner, at its sole cost and expense, shall conduct annual inspections of all permanent installed BMPs per the Plan. The annual inspection report shall include completion of the checklist described in the approved Stormwater Control Operation and Maintenance Plan. The BMPs must be inspected by a qualified independent inspector who is acceptable to the City. The Property Owner shall submit the Inspection Report on these BMPs to the City Engineer no later than July 15th of each year.

SECTION 3. Facility Inspection by the City:

(a) Right of Entry. The Property Owner, on its behalf and on behalf of its successors and assigns, grants permission to the City, the inspectors of the Regional Board, and local mosquito and vector control agency, and their authorized agents and employees, to enter the Property, and to inspect the BMPs whenever the City deems necessary to enforce provisions of the Ordinance, this Agreement, or any other local or state requirements. The City may enter the premises at any reasonable time during normal business hours and upon at least 48 hours prior written notice (except that prior written notice is not required in case of emergency) to inspect the premises related to BMPs and BMP operation and maintenance, to inspect and copy records related to storm water compliance, and to collect samples and take measurements related to BMPs. The Property Owner shall deposit and maintain a Private Job Account with the City a minimum balance of **Four Thousand Dollars ($4,000)** for inspection by City Staff pursuant to this Section 3. The deposit of **Four Thousand Dollars ($4,000.00)** shall be made simultaneously with the execution of this Agreement.

(b) Security. The City may require the Owner, its successors and assigns, from time to time, to post security in a form, amount, and for a time period satisfactory to City to guarantee performance of the obligations stated herein. Should the Owner, its successors and assigns, fail to perform the obligations under this Agreement, the City may, in the case of a cash bond, act for the Owner, its successors and assigns, using the proceeds from such cash bond, or in the case of a surety bond, require the surety to perform the obligations of this Agreement.

SECTION 4. Failure to Perform Required Facility Repairs or Maintenance by the Property Owner:

(a) Enforcement Action. If the Property Owner or its successors fail to operate and maintain the BMPs in good working order and in accordance with the approved Plan and the City's Ordinance, the City may, but is not required to, pursue any enforcement action available at law or in equity to cause the completion of all maintenance and may charge the costs of such enforcement action against the Property Owner in any manner authorized by law or in equity.

(b) City Maintenance. In the event of Property Owner's failure to operate and maintain BMPs in accordance with the Plan and the City's Ordinance, the City may also, with prior written notice, enter the Property to return the BMPs to good working order; provided however that the Property Owner shall have 30 days after any such notice, or such other time provided by law, to cure the relevant failure and provided further that the Property Owner shall have such additional time after the initial 30 days to complete a cure so long as Property Owner commences the cure within the initial 30 days and diligently prosecutes the cure to completion. Notwithstanding the foregoing, City may in its sole discretion enter the Property to return the BMPs to good working in an emergency and take any other necessary action to mitigate an emergency without any notice to Property Owner. The City is under no obligation to maintain or repair the BMPs, and this Agreement may not be construed to impose any such obligation on the City. If the City, under this Section 4 takes any action to return the BMPs to good working order, the Property Owner

shall reimburse the City for all the reasonable costs and expenses incurred by the City. The City will provide the Property Owner with an itemized invoice of the City's costs and expenses and the Property Owner shall make full payments to the City within thirty (30) days of the date of the invoice. If the Property Owners fails to pay the invoice within thirty (30) days, the City shall be entitled to cause a lien for any such unpaid maintenance expense bill to be recorded against the Property. In addition, the City shall be entitled to have the unpaid amount of the invoice placed as a special assessment on the next regular tax bill levied against the Property, after which such assessment shall be collected in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and same procedures under foreclosure and sale in the case of delinquency as provided for ordinary municipal taxes. The actions described in this section are in addition to and not in lieu of other legal remedies provided by law. Notwithstanding the above, it is understood that City is under no obligation to repair or maintain the BMPs, and in no event shall this Agreement be construed to impose any such obligation on City.

(c) Specific Performance. The provisions of this Agreement are expressly declared to be for the benefit of the City. The City may bring an action to obtain specific performance of this Agreement and may recover its costs, including attorney fees, incurred in bringing such action.

SECTION 5: Successors and Assigns:

Property Owner hereby declares that the Property shall be held, transferred, encumbered, used, conveyed, leased and occupied subject to the covenants, conditions, restrictions, easements and rights set forth herein for the use and benefit of each of the Lots. All of the limitations, easements, uses, obligations, covenants, restrictions and conditions stated herein shall run with the Property and shall be binding upon Property Owner, its successors and assigns, any and all parties having or acquiring any right, title or interest in or to the Property or any part thereof or interest therein and shall inure to the benefit of and be binding upon each successor-in-interest thereto.

Upon transfer of the property, the Property Owner shall provide the new owner with the current Plan and a copy of this Agreement and shall, in any event, be released from all obligations under this Agreement as of the effective date of the transfer of the Property.

SECTION 6. Indemnity:

The Property Owner, on Property Owner's behalf and on behalf of all successors in interest pursuant to Section 5 of this Agreement, shall indemnify, release, hold harmless, and defend the City and its authorized agents and employees from and against any and all demands, suits, liabilities, fines, losses, damages, accidents, casualties, occurrences or claims, including reasonable attorneys' fees, against the City which may in anyway arise or relate to the construction, operation, presence, existence or maintenance of the BMPs, or from any personal injury or property damage that may arise or relate from the City entering the property under Section 4. If a claim is asserted against the City, its authorized agents or employees, the City shall promptly notify the Property Owner and the Property Owner shall defend the claim and any resulting litigation at its sole cost and expense, with counsel approved by City. If any judgment is entered against the City, or its authorized agents or employees, the Property Owner must pay all costs and expenses to satisfy the judgment.

SECTION 7. Severability:

Invalidation of any one of the provisions of this Agreement shall in no way effect any other provisions, and all other provisions shall remain in full force and effect.

SECTION 8. Non-Discrimination:

The Property Owner shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this Agreement.

SECTION 9. Governing Law:

City and Property Owner agree that the law governing this Agreement shall be that of the State of California and that Property Owner shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

SECTION 10. Recordation:

Property Owner shall, within 10 days after the effective date of this Agreement, record or cause the Agreement to be recorded in the Office of the Recorder, Santa Clara County, California, at the expense of the Property Owner, which recording shall constitute notice of the obligations herein set forth and a covenant running with the land and shall be binding upon all of the successors and assigns in title to the Property. In the event Property Owner fails to timely record this Agreement, City shall be authorized but not required to record the Agreement.

SECTION 11. Books and Records:

A. The Property Owner shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements or in any way relating to the performance of this Agreement for a minimum period of three (3) years, or for any longer period required by law.

B. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at no cost to City, at reasonable any time during regular business hours, upon at least 48 hours' prior written request by the City Attorney, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at the Property Owner's address indicated for receipt of notices in this Agreement.

SECTION 12. Notices:

All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To CITY:

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

To PROPERTY OWNER:

Attn: John A. Love,
Vice President
Shapell Properties, Inc.
1990 Bundy Dr., Suite 500
Los Angeles, CA 90025

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

SECTION 13. Venue:

In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

SECTION 14. Interpretation, Prior Agreements:

This Agreement, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. In the event that the terms specified in any of the Exhibits attached hereto conflict with any of the terms specified in the body of this Agreement, the terms specified in the body of this Agreement shall control. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may be modified only by a written amendment duly executed by the parties to this Agreement.

[Signatures on Next Page]

IN WITNESS WHEREOF, the Parties execute this Stormwater Management Facilities Operation and Maintenance Agreement as of the last date set forth below:

PROPERTY OWNER:

MILPITAS TOWN CENTER 2008 LP,
a California limited partnership

By: MILPITAS TOWN CENTER 2008 LLC,
a California limited liability company,
its general partner

By: SHAPELL NORCAL RENTAL PROPERTIES, LLC,
a Delaware limited liability company,
its manager

By: SHAPELL PROPERTIES, INC.,
a Delaware corporation,
its sole member

By: _____
Name: John A. Love
Title: Vice President

CITY:

CITY OF MILPITAS,
A MUNICIPAL CORPORATION

By: _____
Steven McHarris, City Manager

Approved as to form:

By:_____
Michael Mutalipassi, City Attorney

Approved:

By:_____
Lauren Lai, CPA, MPA
Finance Director/Risk Manager

Recommended for approval:

By:_____
Steve Erickson, PE
Director of Engineering/City Engineer

All Capacity Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF Los Angeles

On May 25, 2022, before me, Yumi Swenson, Notary Public, personally appeared John A. Love, 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.

YUMI SWENSON
Notary Public - California
Los Angeles County
Commission # 2298532
My Comm. Expires Aug 21, 2023

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

All Capacity Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

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

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

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

- ☐ Individual
- ☐ Corporate Officer

_____
Title(s)

- ☐ Partner (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 A

Plat and Description for the site

Legal Description

THAT CERTAIN PARCEL KNOWN AS "PARCEL 2", AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD ON MARCH 25, 1981, IN BOOK 481 OF MAPS AT PAGE 34 IN THE OFFICE OF THE RECORDED OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

EXHIBIT B

Operation and Maintenance Plan

Kimley»Horn

CITY OF MILPITAS

Stormwater Management Plan

FOR

Chick-fil-A @ Calaveras

755 E Calaveras,

Milpitas, CA 95035

September 2021

Owner:
Chick-fil-A, Inc.
15635 Alton Parkway, Suite 350,
Irvine, CA 92618

Prepared By:
Kimley Horn
Miles R. Johnson, P.E.
4637 Chabot Drive, Suite #300
Pleasanton, CA 94588
(669) 800-4140
miles.johnson@kimley-horn.com

C.3 Stormwater Management Plan Table of Contents

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Appendices

A. City Stormwater Forms (C.3 Data Form)
B. MRP Calculations and BMP Sizing Calculations
C. Stormwater Control Exhibit
D. Treatment Measure Details and Sections
E. Operations and Maintenance Plan
F. Annual Reporting Tables
G. Stormwater Treatment Facilities Inspection & Maintenance Checklist
H. Geotechnical Investigation

I. Project Setting

a. Project Data

Project Name/Number	Chick-fil-A @ Calaveras, FSR #04483
Applicant	Kimley Horn Miles R. Johnson, P.E. 4637 Chabot Drive, Suite #300 Pleasanton, CA 94588 (669) 800-4140 miles.johnson@kimley-horn.com
Application Submittal Date	August 2021
Project Location	755 E Calaveras, Milpitas, CA 95035
Project Use	Convenience Food Restaurant
Project Type and Description	Existing commercial building to be demolished and redeveloped a new convenience food restaurant. The improvements include drive-through restaurant with outdoor seating, new parking, ADA accessibility, EV parking, a new trash enclosure, landscape improvements and stormwater treatment facilities.
APN Number	02812013
Total Site Improvement Area	1.27 acres (55,267 SF)
Total Pre-Project Pervious Area	0.29 acres (12,705 SF) 23%
Total Pre-Project Impervious Area	0.98 acres (42,562 SF) 77%
Total Post-Project Pervious Area	0.39 acres (16,825 SF) 30%
Total Post-Project Impervious Area	0.88 acres (38,442 SF) 70%

b. Legally Responsible Person Contact Information

Keith Gilbert
Chick-fil-A, Inc.
755 E Calaveras,
Milpitas, CA 95035
(562) 505-5540
Keith.gilbert@cfacorp.com

c. Existing Site Features

The existing property has a single-story commercial building. The majority of the property is asphalt with planting along the Calaveras Boulevard and Hillview Drive. There is one driveway along Hillview Drive. The project site is relatively level, and slopes slightly to the North. Surface drainage at the site is conveyed through sheet flow and a series of underground pipes. Stormwater discharges from the site are not considered direct discharges as defined by the State Water Board into Berryessa Creek. Berryessa Creek discharges to Lower Penitencia Creek, which flows to the Coyote Creek and ultimately South Francisco Bay.

d. Vicinity Map

e. Santa Clara Valley Urban Runoff Pollution Prevention Program Provision C.3 Data Form

The City of Milpitas – Stormwater Requirements C.3 Data Form has been completed and is included in this report in Appendix A – City Stormwater Forms.

f. City of Milpitas LID Feasibility Worksheets

The City of Milpitas Infiltration Feasibility Worksheet is not required since the saturated hydraulic conductivity, Ksat for this site does not exceed 1.6 in/hr.

g. Opportunities and Constraints for Stormwater Control

Opportunities: All landscape areas within the proposed site including open space areas, street frontages, and paseos, provide an opportunity for treatment through bioretention areas. These bioretention areas will be incorporated into the landscape design to provide appropriate vegetation and treatment.

Constraints: Project will cover most of the site with new roofs and paving. Disposal of runoff to deep infiltration is not feasible on this site due to the low permeability of the clay soils. Generally flat topography can make it difficult to grade parking lots and driveways sufficiently to drain runoff into planters or swales located at the site perimeter.

Geotechnical Investigation dated September 4, 2020 was performed by Giles Engineering Associates, Inc. Soil conditions, sampling, lab testing and subsurface materials can be found in the attached Geotech Report in Appendix I.

h. Hydrograph Modification Management Requirements

The project is exempt from Hydrograph Modification requirements since the new project does not add or replace 1 acre of more of impervious surface according to Appendix E-1 of SCVURPPP Handbook. Applicant is encouraged to select site design and treatment measures that help accomplish flow control.

II. Measures to Limit Imperviousness

a. Limitation of Development Envelope

Five (5) existing trees along the public streets within the property are proposed to be protected in place. Otherwise, the full property shall be redeveloped.

b. Measures to Limit Directly Connected Impervious Area.

i. Site design features

The site has been designed to direct surface runoff from the site into two (2) bioretention systems. This is to minimize runoff into the stormdrain system from impervious surfaces prior to treatment. These bioretention systems have been placed in locations where existing drainage flows, preserving existing drainage patterns.

ii. Selection of Paving Materials

Conventional concrete and conventional asphalt are used throughout the site. Permeable pavement is not proposed on this project. The existing site mostly has dense, clayey soils which are not well-draining.

iii. Detention and drainage design

The proposed project directs runoff from the three (3) Drainage Management Areas to the two (2) proposed LID treatment areas.

iv. Roof run-off through treatment facility

The new convenience store roof shall be directed to Bioretention Area A, via roof drains which connect to storm drain pipes, and discharge to street, and surface flow to the Bioretention Area.

III. Selection and Design of Stormwater Treatment BMP's[1]

a. Hydrology

Runoff coefficients for existing and proposed on-site conditions were based on the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP). The estimated runoff coefficients are 0.9 per stormwater report per separate submittal.

CASQA BMP Handbook Method was used for hydraulic sizing the bioretention area. Refer to Appendix B for BMP sizing calculations.

b. Recommended Permanent BMP's

This SWCP has identified the use of Bioretention as the best method to fulfill on-site treatment requirements. The BMP's will provide a level of treatment that meets the C.3 requirements for the runoff generated by the project improvements:

- Selected landscaping areas can be used as bioretention BMP's. Where feasible, adjacent roof, parking and street runoff will be directed to bioretention areas.
- Roof runoff from the perimeter will be directed to the bioretention areas.

c. Bioretention Facilities – Landscape Requirements

Bioretention treatment areas are designed to filter pollutants from stormwater runoff from adjacent roofs, parking, streets, and landscape areas using a combination of vegetation, ponding, permeable planting soil, and a subdrain system. Bioretention treatment areas, which will receive runoff through disconnected downspouts, curb cut, and the local area drain system will be located throughout the site and will ultimately discharge into the existing storm drain system. The local area drain system will collect runoff from building downspouts and pathways prior to discharging into the bioretention areas.

Bioretention treatment areas will be sized to maximize treatment for tributary areas. Runoff that is directed into the bioretention areas will infiltrate through a minimum of 18" of biotreatment soil (as identified in the SCVURPPP Handbook, consist of the mixture of 60%-70% of fine sand and 30%-40% of compost, measured on a volume basis). The treatment soil and the planting material to be used within the bioretention treatment areas must have an infiltration rate of 5 inches per hour to meet the minimum infiltration criteria as describe in the SCVURPPP bioretention design and sizing guidelines.

[1] Hydro Modification are only used for projects with 1 acre or more impervious surface and creating more impervious surface area over the pre-project (existing) condition.

Each bioretention area is equipped with an overflow structure that will direct excess water directly into the drainage system. In all cases, the rim of the overflow pipe will be set to meet the minimum ponding depth requirements for each individual bioretention area. Sizing of the bioretention areas is calculated using the Combination Flow and Volume Design Basis Method.

Bioretention area will be responsible for 100% of the required treatment. The drainage area that will be treated is approximately 1.27 acres consisting of 0.88 acres of impervious surfaces. DMAA will be treated in Bioretention Area A at the northeast corner of the project and DMAB will be treated in Bioretention Area B located in a landscape island in the parking field to the west of the restaurant building. Bioretention area data is shown in Appendix A.

The Bioretention facilities should support vigorous plant growth. Plants that are used in the treatment facilities are Cercis Canadensis/Forest Pansey Redbud, Callistemon Viminalis/Little John, and Muhlenbergia regens/Deer Grass. Native and naturalized plans are used within the bioretention facilities to reduce the need for fertilizers, pesticides and other amendments as well as minimize supplemental water use. Maintenance is directed to avoid the use of pesticides and quick release synthetic fertilizers and follow the principles of integrated pest management (IPM).

IV. Source Control Measures

a. Source Control Table

Potential Source of Runoff Pollutants	Permanent Source Control BMPs	Operational Source Control BMPs
On-site storm drain inlets (unauthorized non-stormwater discharges and accidental spills or leaks).	• Mark all inlets with the words "NO DUMPING – DRAINS TO BAY" or similar.	• Maintain and periodically repaint or replace or renewed inlet markings as needed. • Provide stormwater pollution prevention information to new site owners, lessees or operators. • See applicable operational BMPs in Fact Sheet SC-44, "Drainage System Maintenance," in the CASQA Stormwater Quality Handbooks at www.cabmphandbooks.com • Include the following in lease agreements: "Tenant shall not allow anyone to discharge anything to storm-drains or to store or deposit materials so as to create a potential discharge to storm drains."
Landscape/ Outdoor Pesticide Use/ Building and Grounds Maintenance	• Preserve existing native trees, shrubs and ground cover to the maximum extent possible • Design landscaping to minimize irrigation and runoff, to promote surface infiltration where appropriate, and to minimize the use of fertilizers and pesticides that can contribute to stormwater pollution • Where landscaped areas are used to retain or detain stormwater, specific plants that are tolerant of saturated soil conditions • Consider using pest-resistant plans, especially adjacent to hardscape • To ensure successful establishment, select plants approximate to site soils, slopes climate, sun wind, rain, land use, air movement,	• Maintain landscaping using minimum or no pesticides. • See applicable operational BMPs in Fact Sheet SC-41, "Building and Grounds Maintenance," in the CASQA Stormwater Quality Handbooks at www.cabmphandbooks.com • Provide IPM information to new owners, lessees and operators.

	ecological consistency and plant interactions.	
Refuse areas	• The refuse area will be a fully enclosure area, with walls and a roof. Rainwater will land on the roof of the trash enclosure and runoff into the adjacent area which is directed to bioretention. The interior of the trash enclosure will drain to an inlet which is piped to the sanitary sewer system. • A sign will be posted on or near dumpsters with the words "Do not dump hazardous materials here" or similar.	• Prior to washing down the interior of the trash enclosure, verify that the sanitary sewer inlet is draining properly so that all wastewater will be directed to the sanitary sewer system.
Plazas, sidewalks, and parking lots.	•	• Sweep plazas, sidewalks, and parking lots regularly to prevent accumulation of litter and debris. Collect debris from pressure washing to prevent entry into the storm drain system. Collect wash water containing any cleaning agent or degreaser and discharge to the sanitary sewer not to a storm drain.

V. Permitting and Code Compliance Issues

An assessment for the proposed project determined that 100% LID treatment for the project is not feasible. The project site cannot adequately accommodate the required size of biotreatment facilities on the ground level without imposing potential risks to existing infrastructure, the proposed buildings themselves and required utilities needed for building operation and safety.

In conclusion and in conjunction to the Special Project Eligibility section previously noted, this project has no known conflicts between this proposed Stormwater Control Plan and the City of Milpitas' ordinances and policies. Any conflicts that are found will be resolved through the design review process or during subsequent permitting.

VI. Facility Maintenance Requirements

a. Ownership and Responsibility for Maintenance in Perpetuity

i. Commitment to Execute all Required Agreements

The owner is responsible for the implementation of the provisions of this Storm Water

Plan and will ensure that the site maintenance meets up-to-date conditions on the site consistent with the current Stormwater requirements.

The property owner will be subject to an annual fee (set by the City's standard fee schedule) to offset the cost of inspecting the site or verifying that the stormwater management facilities are being maintained. Property owner will also be required to ensure that all costs associated with the perpetual Operation & Maintenance, administration and reporting of these water quality facilities are paid for.

ii. Commitment to Execute any Necessary Agreements.

The property owner(s) will be required to submit a Storm Water Control Operation and Maintenance (O&M) Plan to the City for review and approval prior to the completion of construction and will execute a Stormwater Management Facilities Operation and Maintenance Agreement before sale, transfer, or permanent occupancy of the site.

The Storm Water O&M Plan will be reviewed with the facility operator, facility supervisors, employees, tenants, maintenance and service contractors, or another party having responsibility of implementing portions of this Plan.

b. Statement accepting responsibility for operation and maintenance of facilities until that responsibility is formally transferred.

The owner accepts responsibility for interim operation and maintenance of stormwater treatment and flow-control facilities until such time as this responsibility is formally transferred to a subsequent owner. Once the owner transfers the property, its successors-in-interest shall bear the aforementioned responsibility to implement and amend this Plan.

c. Inspection and Maintenance – Bioretention Basins

Primary maintenance activities include vegetation management and sediment removal. Mosquito larvicides should be applied only when absolutely necessary. The typical maintenance requirements include:

- Conduct semi-annual inspection as follows:
  - Evaluate the health of the vegetation. Replace and amend plants and soils as necessary to ensure the planters are effective and attractive. Plants must remain healthy and trimmed if overgrown. Soils must be maintained to efficiently filter the storm water.
  - Visually inspect for ponding water to ensure that filtration is occurring.
  - After all major storm events, remove any trash and debris, inspect drain pipes and bubble-up risers for obstructions, and remove if necessary.
  - Inspect the outlet, embankments, dikes, berms, and side slopes for structural integrity and signs of erosion or rodent burrows. Fill in any holes detected in the side slopes.
  - Examine outlets and overflow structures and remove any debris plugging the outlets.

- General landscape maintenance, including pruning and cleanup.
- Identify and minimize any sources of sediment and debris. Check rocks or other erosion control and replace, if necessary.
- Excavate, clean and or replace filter media (sand, gravel, topsoil) to ensure adequate infiltration rate.

- Maintenance activities at the bottom of the basin shall NOT be performed with heavy equipment, which would compact the soil and limit infiltration.
- Harvest vegetation annually, during the summer.
- Irrigate throughout the dry season. Irrigation will be provided with sufficient quantity and frequency to allow plants to thrive
- Trim vegetation at beginning and end of the wet season and inspect monthly to prevent establishment of woody vegetation and for aesthetic and mosquito control reasons.
- Dead vegetation shall be removed to maintain less than 10% of area coverage or when vegetative filter strip function is impaired. Vegetation shall be replaced immediately to control erosion where soils are exposed and within 3 months to maintain cover density.
- Avoid the use of pesticides and quick release synthetic fertilizers and follow the principles of integrated pest management (IPM). Check with the local jurisdiction for any local policies regarding the use of pesticides and fertilizers.
- Remove sediment from the forebay when the sediment level reaches the level shown on the fixed vertical sediment marker.
- Remove accumulated sediment and regrade about every 10 years or when the accumulated sediment volume exceeds 10 % of the basin volume.
- Storm drain facilities should be cleaned out once a year.

d. Inspection and Maintenance – Landscape Areas

- Limit the use of fertilizers and/or pesticides. Mosquito larvicides should be applied only when absolutely necessary.
- Replaced and amend plants and soils as necessary to ensure the planters are effective and attractive. Plants must remain healthy and trimmed if overgrown. Soils must be maintained to efficiently filter the storm water.
- After all major storm events, remove trash and inspect drain pipes for obstructions and remove if necessary.
- Continue general landscape maintenance, including pruning and cleanup throughout the year.
- Irrigate throughout the dry season. Irrigation will be provided with sufficient quantity and frequency to allow plants to thrive.

APPENDIX A

C.3 Data Form

City of Milpitas – Stormwater Requirements C.3 Data Form

Santa Clara Valley Urban Run-Off Pollution Prevention Program

Which Projects Must Comply with Stormwater Requirements?

All projects that create and/or replace **10,000 sq. ft.** or more of impervious surface on the project site must fill out this worksheet and submit it with the development project application.

All restaurants, auto service facilities, retail gasoline outlets, and uncovered parking lot projects (stand-alone or part of another development project, including the top uncovered portion of parking structures) that create and/or replace **5,000 sq. ft.** or more of impervious surface on the project site must also fill out this worksheet.

Interior remodeling projects, routine maintenance or repair projects such as re-roofing and re-paving, and single family homes that are not part of a larger plan of development are **NOT** required to complete this worksheet.

What is an Impervious Surface?

An impervious surface is a surface covering or pavement that prevents the land's natural ability to absorb and infiltrate rainfall/stormwater. Impervious surfaces include, but are not limited to rooftops, walkways, paved patios, driveways, parking lots, storage areas, impervious concrete and asphalt, and any other continuous watertight pavement or covering. Pervious pavement, underlain with pervious soil or pervious storage material (e.g., drain rock), that infiltrates rainfall at a rate equal to or greater than surrounding unpaved areas OR that stores and infiltrates the water quality design volume specified in Provision C.3.d of the Municipal Regional Stormwater Permit (MRP) is not considered an impervious surface.

For More Information

For more information regarding selection of Best Management Practices for stormwater pollution prevention or stormwater treatment in Santa Clara County: http://www.scvurppp-w2k.com/c3_handbook_2012.shtml

1. Project Information

Project Name: Chick-fil-A @ Calaveras & Hillview **APN #** 02812013

Project Address: 755 E Calaveras, Milpitas, CA

Cross Streets: Calaveras & Hillview

Applicant/Developer Name: Chick-fil-A

Project Phase(s): 1 of 1 **Engineer:** Miles Johnson

Project Type (Check all that apply): ☐ New Development ☑ Redevelopment

☐ Residential ☑ Commercial ☐ Industrial ☐ Mixed Use ☐ Public ☐ Institutional

☐ Restaurant ☐ Uncovered Parking ☐ Retail Gas Outlet ☐ Auto Service (SIC code)_____
(5013-5014, 5541, 7532-7534, 7536-7539)

☐ Other _____

Project Description: Proposed Drive-Thru Restaurant with Parking and Landscaping

Project Watershed/Receiving Water (creek, river, or bay): San Francisco Bay

2. Project Size

a. Total Site Area: 1.13 acre	b. Total Site Area Disturbed: 1.27 acre (including clearing, grading, or excavating)			
	Existing Area (ft^2)	Proposed Area (ft^2)		Total Post-Project Area (ft^2)
		Replaced	New	
Impervious Area				
Roof	12,126	5,287	0	5,287
Parking	23,977	23,977	3,758	27,735
Sidewalks and Streets	6,459	5,420	0	5,420
c. Total Impervious Area	42,562	35,439	3,758	38,442
d. Total new and replaced impervious area		38,442		
Pervious Area				
Landscaping	12,705	12,705	4,120	16,825
Pervious Paving	0	0	0	0
Other (e.g. Green Roof)	0	0	0	0
e. Total Pervious Area	12,705	12,705	4,120	16,825
f. Percent Replacement of Impervious Area in Redevelopment Projects (Replaced Total Impervious Area ÷ Existing Total Impervious Area) x 100% = 83 %				

3. State Construction General Permit Applicability:

a. Is #2.b. equal to one acre or more?

☑ Yes, applicant must obtain coverage under the State Construction General Permit (i.e., file a Notice of Intent and prepare a Stormwater Pollution Prevention Plan) (see www.swrcb.ca.gov/water_issues/programs/stormwater/construction.shtml for details).

☐ No, applicant does not need coverage under the State Construction General Permit.

4. MRP Provision C.3 Applicability:

a. Is #2.d. equal to **10,000** sq. ft. or more, or **5,000** sq. ft. or more for restaurants, auto service facilities, retail gas outlets, and uncovered parking?

☑ Yes, C.3. source control, site design, and treatment requirements apply.

☐ No, C.3. source control and site design requirements may apply – check with local agency

b. Is #2.f. equal to 50% or more?

☑ Yes, C.3. requirements (site design, source control, as appropriate, and stormwater treatment) apply to entire site.

☐ No, C.3. requirements only apply to impervious area created and/or replaced.

5. Hydromodification Management (HM) Applicability:

a. Does project create and/or replace one acre or more of impervious surface AND is the total post-project impervious area greater than the pre-project (existing) impervious area?

☐ Yes (continue) ☑ No – exempt from HM, go to page 3

b. Is the project located in an area of HM applicability (green area) on the HM Applicability Map? (www.scvurppp-w2k.com/hmp_maps.htm)

☐ Yes, project must implement HM requirements

☐ No, project is exempt from HM requirements

6. Selection of Specific Stormwater Control Measures:

Site Design Measures

- ☑ Minimize land disturbed
- ☑ Minimize impervious surfaces
- ☑ Minimum-impact street or parking lot design
- ☐ Cluster structures/ pavement
- ☐ Disconnected downspouts
- ☐ Pervious pavement
- ☐ Green roof
- ☐ Microdetention in landscape
- ☑ Other self-treating area
- ☑ Self-retaining area
- ☐ Rainwater harvesting and use (e.g., rain barrel, cistern connected to roof drains) [1]
- ☐ Preserved open space: _____ ac. or sq. ft .(circle one)
- ☐ Protected riparian and wetland areas/buffers (Setback from top of bank: _____ft.)
- ☐ Other _____

Source Control Measures

- ☐ Alternative building materials
- ☐ Wash area/racks, drain to sanitary sewer[2]
- ☑ Covered dumpster area, drain to sanitary sewer[2]
- ☐ Sanitary sewer connection or accessible cleanout for swimming pool/spa/fountain[2]
- ☑ Beneficial landscaping (minimize irrigation, runoff, pesticides and fertilizers; promotes treatment)
- ☐ Outdoor material storage protection
- ☐ Covers, drains for loading docks, maintenance bays, fueling areas
- ☐ Maintenance (pavement sweeping, catch basin cleaning, good housekeeping)
- ☑ Storm drain labeling
- ☐ Other _____

Treatment Systems

- ☐ None (all impervious surface drains to self-retaining areas)

LID Treatment

- ☐ Rainwater harvest and use (e.g., cistern or rain barrel sized for C.3.d treatment)
- ☐ Infiltration basin
- ☐ Infiltration trench
- ☐ Exfiltration trench
- ☐ Underground detention and infiltration system (e.g. pervious pavement drain rock, large diameter conduit)

Biotreatment [3]

- ☑ Bioretention area
- ☐ Flow-through planter
- ☐ Tree box with bioretention soils
- ☐ Other _____

Other Treatment Methods

- ☐ Proprietary tree box filter[4]
- ☐ Media filter (sand, compost, or proprietary media)[4]
- ☐ Vegetated filter strip[5]
- ☐ Dry detention basin[5]
- ☐ Other _____

Flow Duration Controls for Hydromodification Management (HM)

- ☐ Detention basin
- ☐ Underground tank or vault
- ☐ Bioretention with outlet control
- ☐ Other _____

[1] Optional site design measure; does not have to be sized to comply with Provision C.3.d treatment requirements.
[2] Subject to sanitary sewer authority requirements.
[3] Biotreatment measures are allowed only with completed feasibility analysis showing that infiltration and rainwater harvest and use are infeasible.
[4] These treatment measures are only allowed if the project qualifies as a "Special Project".
[5] These treatment measures are only allowed as part of a multi-step treatment process.

7. Treatment System Sizing for Projects with Treatment Requirements

Indicate the hydraulic sizing criteria used and provide the calculated design flow or volume:

Treatment System Component	Hydraulic Sizing Criteria Used[3]	Design Flow or Volume (cfs or cu.ft.)
Bioretention Area A	2b	75 cu.ft.
Bioretention Area B	2b	1,160 cu.ft.

[3]Key: 1a: Volume – WEF Method
1b: Volume – CASQA BMP Handbook Method
2a: Flow – Factored Flood Flow Method
2b: Flow – CASQA BMP Handbook Method
2c: Flow – Uniform Intensity Method
3: Combination Flow and Volume Design Basis

8. Alternative Certification: Was the treatment system sizing and design reviewed by a qualified third-party professional that is not a member of the project team or agency staff?

☐ Yes ☑ No Name of Reviewer: _____

9. Operation & Maintenance Information

A. Property Owner's Name: Keith Gilbert

B. Responsible Party for Stormwater Treatment/Hydromodification Control O&M:

a. Name: Chick-fil-A

b. Address: 15635 alton parkway, suite 350, irvine, ca 92618

c. Phone/E-mail: 562-505-5540 // keith.gilbert@cfacorp.com

This section to be completed by City of Milpitas staff.

O&M Responsibility Mechanism

Indicate how responsibility for O&M is assured. Check all that apply:

☐ O&M Agreement

☐ Other mechanism that assigns responsibility (describe below):

_____

_____

Reviewed:

Planning Department

Planning Division: _____

Other (Specify): _____

Public Works Department

Land Development: _____

Other (Specify): _____

APPENDIX C

MRP Calculations and BMP Sizing Calculations

Section II. Sizing for Volume-Based Treatment Measures, continued

Section II.B — Sizing Volume-Based Treatment Measures based on the Adapted CASQA Stormwater BMP Handbook Approach

The equation that will be used to size the BMP is:

Design Volume = (Rain Gage Correction Factor) × (Unit Basin Storage Volume) × (Drainage Area)

Step 1. Determine the drainage area for the BMP, A = 0.43 acres

Step 2. Determine percent imperviousness of the drainage area:

a. Estimate the amount of impervious surface (rooftops, hardscape, streets, and sidewalks, etc.) in the area draining to the BMP: 0.25 acres

b. % impervious area = (amount of impervious area/drainage area for the BMP) × 100
% impervious area = **(Step 2.a/Step 1)** × 100
% impervious area = 58 %

Step 3. Find the mean annual precipitation at the site (MAP_{site}). To do so, estimate where the site is on Figure B-1 and estimate the mean annual precipitation in inches from the rain line (isopleth) nearest to the project site.[6] Interpolate between isopleths if necessary.

MAP_{site} = 16 inches

Step 4. Identify the reference rain gage closest to the project site from Table B-2b and record the MAP_{gage}:

MAP_{gage} = 13.9 inches

Table B-2b: Precipitation Data for Three Reference Gages

Reference Rain Gages	Mean Annual Precipitation (MAP_{gage}) (in)
San Jose Airport	13.9
Palo Alto	13.7
Morgan Hill	19.5

[6] Check with the local municipality to determine if more detailed maps are available for locating the site and estimating MAP.

Section II. Sizing for Volume-Based Treatment Measures, continued

Section II.B —Adapted CASQA Stormwater BMP Handbook Approach (continued)

Step 5 Determine the rain gage correction factor for the precipitation at the site using the information from **Step 3** and **Step 4**.

Correction Factor = MAP_{site} (**Step 3**)/MAP_{gage} (**Step 4**)

Correction Factor = 1.15

Step 6. Identify the representative soil type for the BMP drainage area.

a) Identify from Figure B-1 or from site soils data, the soil type that is representative of the pervious portion of the project shown here in order of increasing infiltration capability:

X Clay (D) ____ Sandy Clay (D) ____ Clay Loam (D)

____ Silt Loam/Loam (B) ____ Not Applicable (100% Impervious)

b) Does the site planning allow for protection of natural areas and associated vegetation and soils so that the soils outside the building footprint are not graded/compacted? Y (Y/N)

If your answer is no, and the soil will be compacted during site preparation and grading, the soil's infiltration ability will be decreased. Modify your answer to a soil with a lower infiltration rate (e.g., Silt Loam to Clay Loam or Clay).

Modified soil type: _____

Step 7. Determine the average slope for the drainage area for the BMP: 2.00 %

Step 8. Determine the unit basin storage volume from sizing curves.

a) Slope $\leq$ 1%

Use the figure at the end of this Appendix entitled "Unit Basin Volume for 80% Capture, 1% Slope" corresponding to the nearest rain gage: Figure B-2, B-3, or B-4 for San Jose, Palo Alto, or Morgan Hill, respectively. Find the percent imperviousness of the drainage area (from **Step 2**) on the x-axis. From there, find the line corresponding to the soil type (from **Step 6**), and obtain the unit basin storage volume on the y-axis.

Unit Basin Storage for 1% slope ($UBS_{1\%}$) = 0.46 (inches)

b) Slope $\geq$ 15%

Use the figure at the end of this Appendix entitled "Unit Basin Volume for 80% Capture, 15% Slope" corresponding to the nearest rain gage: Figure B-5, B-6, or B-7 for San Jose, Palo Alto, or Morgan Hill, respectively. Find the percent imperviousness of the drainage area (from **Step 2**) on the x-axis. From there, find the line corresponding to the soil type (from **Step 6**), and obtain the unit basin storage volume on the y-axis.

Unit Basin Storage for 15% slope ($UBS_{15\%}$) = 0.48 (inches)

Section II. Sizing for Volume-Based Treatment Measures, continued

Section II.B. —Adapted CASQA Stormwater BMP Handbook Approach (continued)

c) Slope > 1% and < 15%

Find the unit basin volumes for 1% and 15% using the techniques in **Steps 8.a** and **8.b** and interpolate by applying a slope correction factor per the following formula:

$UBS_x = UBS_{1\%} + (UBS_{15\%} - UBS_{1\%}) \times (X\%-1\%) / (15\% -1\%)$
$= (\textbf{Step 8a}) + (\textbf{Step 8b}- \textbf{Step 8a}) \times (X\%-1\%)/(15\%-1\%)$

Where UBS_x = Unit Basin Storage volume for drainage area of intermediate slope, X %

Unit Basin Storage volume (UBS_x) = 0.03 (inches)
(corrected for slope of site)

Step 9. Determine the Adjusted Unit Basin Storage Volume for the site, using the following equation:

Adjusted UBS = Rain Gage Correction Factor × Unit Basin Storage Volume

Adjusted UBS = (**Step 5**) × (**Step 8**)

Adjusted UBS = 0.03 inches

Step 10. Determine the BMP Design Volume, using the following equation:

Design Volume = Adjusted Unit Basin Storage Volume × Drainage Area

Design Volume = (**Step 9**) × (**Step 1**) × 1 foot/12 inch

Design Volume = 0.0011 acre-feet × 43,560 square feet/acre = 47.9 cubic feet

Section II. Sizing for Volume-Based Treatment Measures, continued

Section II.B — Sizing Volume-Based Treatment Measures based on the Adapted CASQA Stormwater BMP Handbook Approach

The equation that will be used to size the BMP is:

Design Volume = (Rain Gage Correction Factor) × (Unit Basin Storage Volume) × (Drainage Area)

Step 1. Determine the drainage area for the BMP, A = 0.83 acres

Step 2. Determine percent imperviousness of the drainage area:

a. Estimate the amount of impervious surface (rooftops, hardscape, streets, and sidewalks, etc.) in the area draining to the BMP: 0.64 acres

b. % impervious area = (amount of impervious area/drainage area for the BMP) × 100
% impervious area = **(Step 2.a/Step 1)** × 100
% impervious area = 77 %

Step 3. Find the mean annual precipitation at the site (MAP_{site}). To do so, estimate where the site is on Figure B-1 and estimate the mean annual precipitation in inches from the rain line (isopleth) nearest to the project site.[6] Interpolate between isopleths if necessary.

MAP_{site} = 16 inches

Step 4. Identify the reference rain gage closest to the project site from Table B-2b and record the MAP_{gage}:

MAP_{gage} = 13.9 inches

Table B-2b: Precipitation Data for Three Reference Gages

Reference Rain Gages	Mean Annual Precipitation (MAP_{gage}) (in)
San Jose Airport	13.9
Palo Alto	13.7
Morgan Hill	19.5

[6] Check with the local municipality to determine if more detailed maps are available for locating the site and estimating MAP.

Section II. Sizing for Volume-Based Treatment Measures, continued

Section II.B —Adapted CASQA Stormwater BMP Handbook Approach (continued)

Step 5 Determine the rain gage correction factor for the precipitation at the site using the information from **Step 3** and **Step 4**.

Correction Factor = MAP_{site} (**Step 3**)/MAP_{gage} (**Step 4**)

Correction Factor = 1.15

Step 6. Identify the representative soil type for the BMP drainage area.

a) Identify from Figure B-1 or from site soils data, the soil type that is representative of the pervious portion of the project shown here in order of increasing infiltration capability:

X Clay (D) ____ Sandy Clay (D) ____ Clay Loam (D)

____ Silt Loam/Loam (B) ____ Not Applicable (100% Impervious)

b) Does the site planning allow for protection of natural areas and associated vegetation and soils so that the soils outside the building footprint are not graded/compacted? Y (Y/N)

If your answer is no, and the soil will be compacted during site preparation and grading, the soil's infiltration ability will be decreased. Modify your answer to a soil with a lower infiltration rate (e.g., Silt Loam to Clay Loam or Clay).

Modified soil type: _____

Step 7. Determine the average slope for the drainage area for the BMP: 2.00 %

Step 8. Determine the unit basin storage volume from sizing curves.

a) Slope $\leq$ 1%

Use the figure at the end of this Appendix entitled "Unit Basin Volume for 80% Capture, 1% Slope" corresponding to the nearest rain gage: Figure B-2, B-3, or B-4 for San Jose, Palo Alto, or Morgan Hill, respectively. Find the percent imperviousness of the drainage area (from **Step 2**) on the x-axis. From there, find the line corresponding to the soil type (from **Step 6**), and obtain the unit basin storage volume on the y-axis.

Unit Basin Storage for 1% slope ($UBS_{1\%}$) = 0.52 (inches)

b) Slope $\geq$ 15%

Use the figure at the end of this Appendix entitled "Unit Basin Volume for 80% Capture, 15% Slope" corresponding to the nearest rain gage: Figure B-5, B-6, or B-7 for San Jose, Palo Alto, or Morgan Hill, respectively. Find the percent imperviousness of the drainage area (from **Step 2**) on the x-axis. From there, find the line corresponding to the soil type (from **Step 6**), and obtain the unit basin storage volume on the y-axis.

Unit Basin Storage for 15% slope ($UBS_{15\%}$) = 0.53 (inches)

Section II. Sizing for Volume-Based Treatment Measures, continued

Section II.B. —Adapted CASQA Stormwater BMP Handbook Approach (continued)

c) Slope > 1% and < 15%

Find the unit basin volumes for 1% and 15% using the techniques in **Steps 8.a** and **8.b** and interpolate by applying a slope correction factor per the following formula:

$UBS_x = UBS_{1\%} + (UBS_{15\%} - UBS_{1\%}) \times (X\%-1\%) / (15\% -1\%)$
$= (\textbf{Step 8a}) + (\textbf{Step 8b}- \textbf{Step 8a}) \times (X\%-1\%)/(15\%-1\%)$

Where UBS_x = Unit Basin Storage volume for drainage area of intermediate slope, X %

Unit Basin Storage volume (UBS_x) = 0.04 (inches)
(corrected for slope of site)

Step 9. Determine the Adjusted Unit Basin Storage Volume for the site, using the following equation:

Adjusted UBS = Rain Gage Correction Factor × Unit Basin Storage Volume

Adjusted UBS = (**Step 5**) × (**Step 8**)

Adjusted UBS = 0.05 inches

Step 10. Determine the BMP Design Volume, using the following equation:

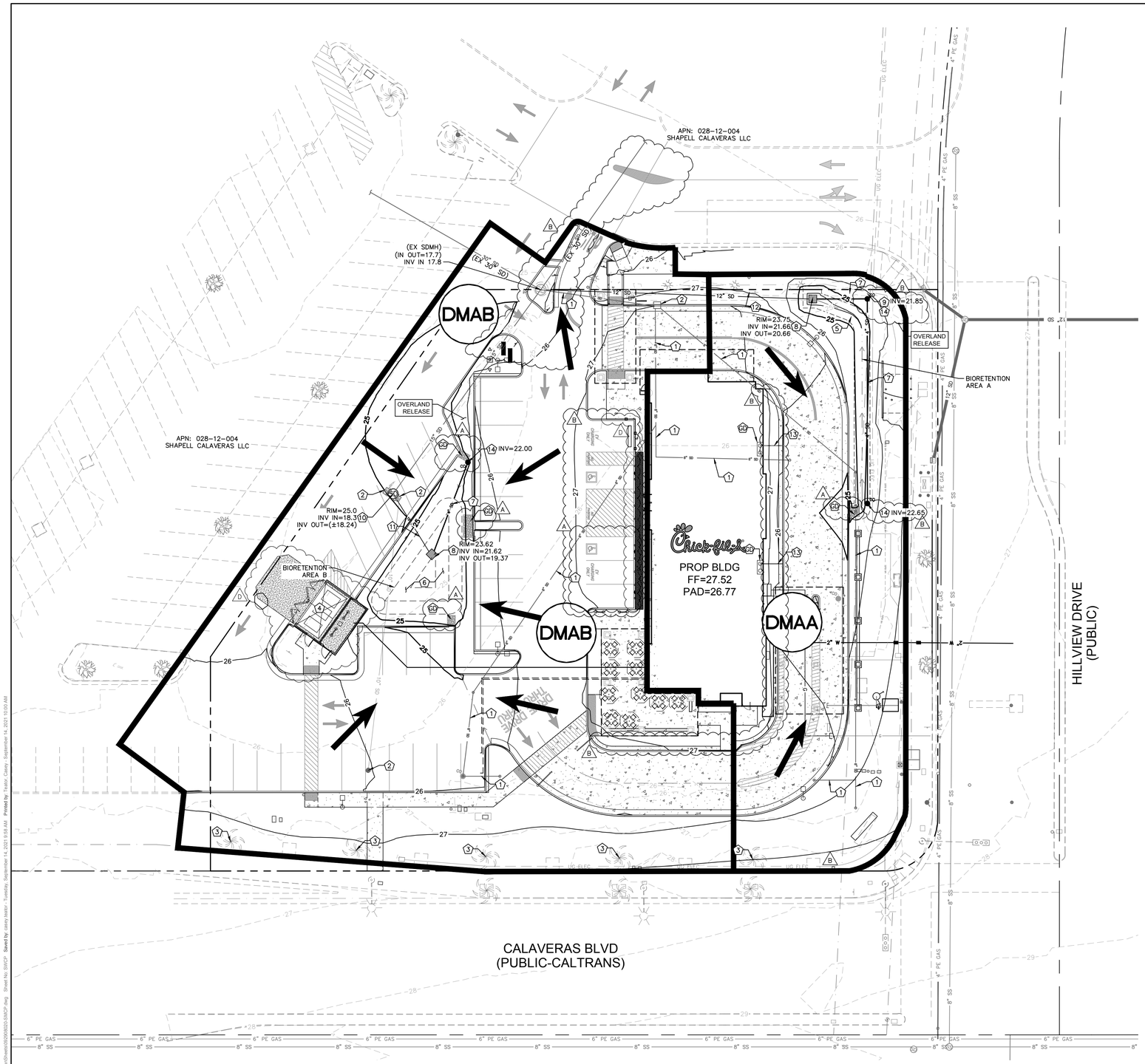
Design Volume = Adjusted Unit Basin Storage Volume × Drainage Area

Design Volume = (**Step 9**) × (**Step 1**) × 1 foot/12 inch

Design Volume = 0.0035 acre-feet × 43,560 square feet/acre = 151 cubic feet

APPENDIX D

Stormwater Control Exhibits



STORMWATER NOTES

1. EXISTING STORM DRAIN PIPE TO BE REMOVED
2. EXISTING DROP INLET TO BE REMOVED
3. EXISTING TREES TO REMAIN
4. PROPOSED COVERED TRASH ENCLOSURE
5. PROPOSED BIORETENTION AREA A; DESIGN VOLUME=75.48 CUBIC FEET – REFER TO DETAIL 45, SHEET 13 (A)
6. PROPOSED BIORETENTION AREA B; DESIGN VOLUME=1,330 CUBIC FEET – REFER TO DETAIL 45, SHEET 13 (A)
7. INSTALL 4" PERFORATED PIPE; S=1.0%
8. INSTALL FLAT GRATE STORM INLET PER CITY OF MILPITAS STD DWG NO. 464 – SEE DETAIL 41, SHEET 12 (A)
9. INSTALL 90° BEND SAME SIZE AS LINE
10. INSTALL CONCENTRIC MANHOLE PER CITY OF MILPITAS STD DWG NO. 230 – SEE DEATAIL 40, SHEET 12 (A)
11. INSTALL 15" PVC STORM DRAIN PIPE; SLOPE=3.83% LENGTH=28.0 LF
12. INSTALL 12" PVC STORM DRAIN PIPE; SLOPE=2.82% LENGTH=101.5 LF
13. INSTALL 4" PVC STORM DRAIN PIPE; SLOPE=0.50% LENGTH=8.53 LF
14. INSTALL 4" CLEAN OUT PER DETAIL 45, SHEET 13 (A)
15. RIPRAP PER GRADING PLANS (B)
16. INSTALL 36"X36" DROP INLET–JENSEN MODEL DI3636 OR EQUIVALENT W/REM SYSTEM – SEE DETAILS 48 & 49, SHEET 13

LEGEND

FLOW ARROWS

RIPRAP PADS/DISSIPATORS

PERVIOUS & IMPERVIOUS AREAS		
EXISTING		
DMA	IMPERVIOUS AREA (SF)	PERVIOUS AREA (SF)
A	13,892	4,912
B	28,670	7,793
TOTAL	42,562	12,705
PROPOSED		
DMA	IMPERVIOUS AREA (SF)	PERVIOUS AREA (SF)
A	10,867	7,937
B	27,575	8,888
TOTAL	38,442	16,825

SOILS

PER SOILS REPORT (DATED AUGUST 5, 2019) FROM UNITED STATES DEPARTMENT OF AGRICULTURE NATURAL RESOURCES CONSERVATION SERVICE THE SOIL IS A 145 – URBANLAND–HANGERONE COMPLEX WHICH IS A CLAY TYPE SOIL. GROUND WATER IS MORE THAN 80 INCHES.

NOTES:

ALL DIMENSIONS ARE TO BACK OF CURB UNLESS OTHERWISE NOTED.

OWNER RESPONSIBLE TO PROVIDE SURVEY MONUMENTATION AS SHOWN AND TO REPLACE ALL SURVEY MONUMENTATION DAMAGED, DISTURBED, DESTROYED, OR OBSCURED DURING CONSTRUCTION.

BASIS OF BEARING

THE BEARING OF NORTH 14°31'24" WEST ALONG THE CENTERLINE OF NORTH HILLVIEW DRIVE, AS SHOWN ON A PARCEL MAP FILED IN BOOK 481 OF MAPS, AT PAGES 34–35, SANTA CLARA COUNTY RECORDS, WAS USED AS THE BASIS OF BEARINGS FOR THIS MAP.

BENCHMARK

SANTA CLARA VALLEY WATER DISTRICT BENCHMARK ID: "BM045" BRASS DISK ON TOP OF CONCRETE HEADWALL; SOUTHWEST CORNER OF CALAVERAS BOULEVARD BRIDGE OVER BERRYESSA CREEK; 200 FEET EAST FROM S. HILLVIEW DRIVE. CITY OF MILPITAS

ELEVATION=31.04 FEET (DATUM: THE NORTH AMERICAN VERTICAL DATUM OF 1988)

YEAR OF ADJUSTMENT=2017

CALCULATIONS (B)

PLEASE SEE SHEETS 15A AND 15B FOR STORMWATER CALCULATIONS.

RUNOFF NOTE

RUNOFF IS CONVEYED TO BIOTREATMENT AREAS VIA SHEET FLOW TO CURB OPENINGS.

ROOF DRAINS SPILL THRU CURB TO DRIVE THRU LANE AND THEN SHEET FLOW TO CURB OPENING WITHIN DMAA (B)

DMAA DRAINS TO BIORETENTION AREA A AND THEN TO PROPOSED INLET AND 12" PIPE THAT CONNECTS TO EXISTING 30" STORM DRAIN SYSTEM IN EXISTING CENTER.

DMAB DRAINS TO BIORETENTION AREA B AND THEN TO PROPOSED INLET AND 15" PIPE THAT CONNECTS TO EXISTING 30" STORM DRAIN SYSTEM IN EXISTING CENTER.

Chick-fil-A
5200 Buffington Road
Atlanta, Georgia
30349-2998

Kimley»Horn
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6671 LAS VEGAS BLVD. S., SUITE 200, LAS VEGAS, NV 89119
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WWW.KIMLEY-HORN.COM

REGISTERED PROFESSIONAL ENGINEER
MILES R. JOHNSON
RCE NO. 84307
CIVIL
STATE OF CALIFORNIA
9/13/2021

CHICK-FIL-A
Calaveras & Hillview
Calaveras & Hillview
Milpitas, CA 95035

FSR# 04483

ISSUE FOR CONSTRUCTION

REVISION SCHEDULE

NO.	DATE	DESCRIPTION
A	2/4/2021	CITY RESUBMITTAL 1
B	4/26/2021	CITY RESUBMITTAL 2
D	7/26/2021	BD #3 COMMENT RESPONSES

AGENCY #	-
PROJECT #	092908020
PRINTED FOR	BID
DATE	9/13/2021
DESIGN BY	CT
DRAWN BY	CT

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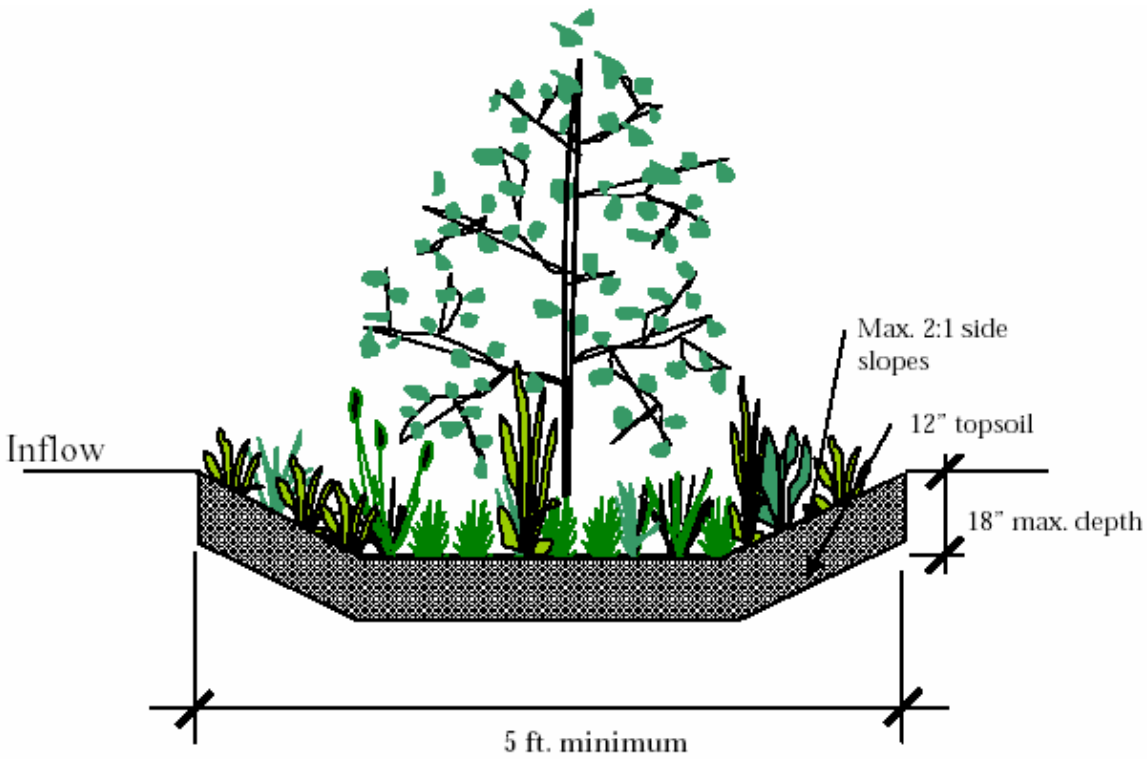
SHEET: STORMWATER MANAGEMENT PLAN

SHEET NUMBER
15

APPENDIX E

Treatment Measure Details and Sections

► *LANDSCAPE INFILTRATION/BIORETENTION*



Section Not to Scale

Minimum storage depth: 6"

Maximum storage depth: 18"

Maximum side slope: 2:1.

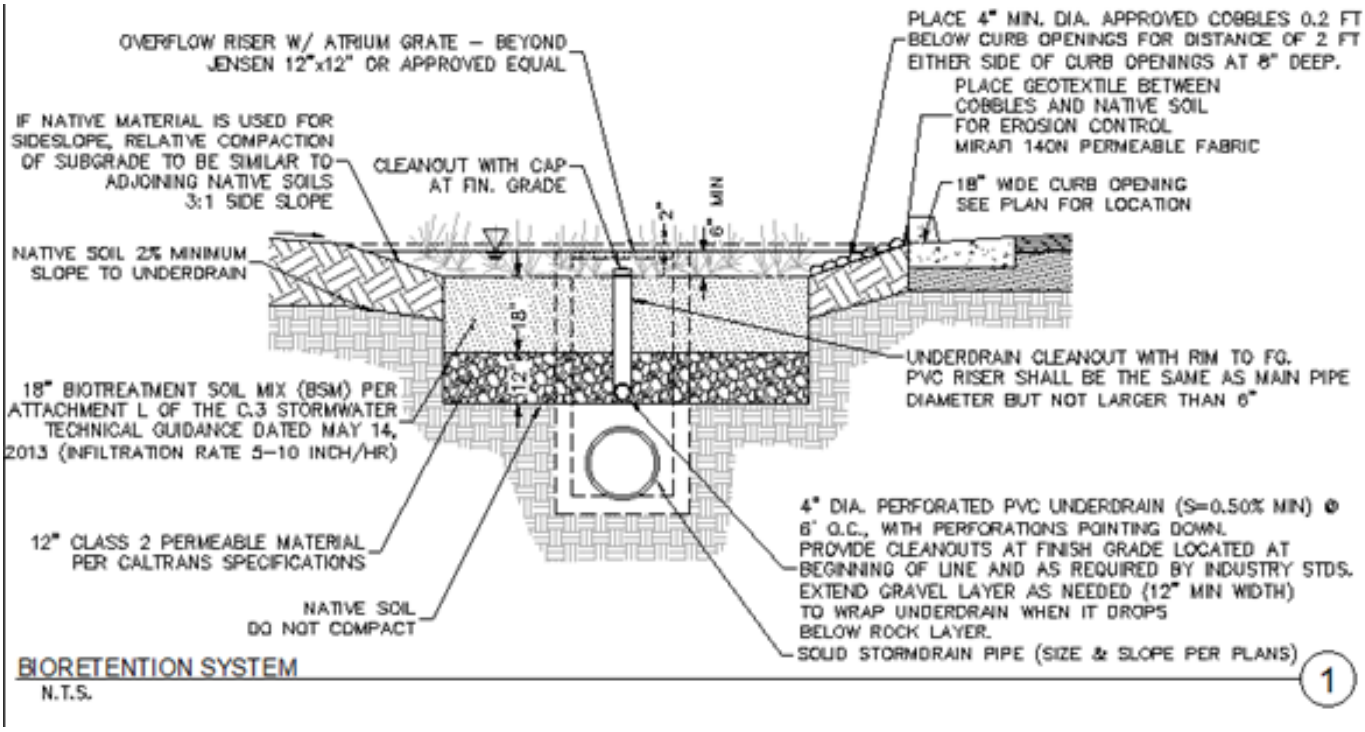
Minimum bottom width: 3 '

Plantings may include trees, shrubs, grasses or turfgrasses suitable for periodic inundation. Irrigation required to maintain plant viability.

Soils in the top 12" to be equivalent to a sandy loam with a minimum infiltration rate of 5 inches/hour.

Provide liner where required to protect groundwater. Provide underdrain system in "D" soils or where liner is required.

Drawing courtesy City of Portland, OR.


OVERFLOW RISER W/ ATRIUM GRATE – BEYOND JENSEN 12"x12" OR APPROVED EQUAL
PLACE 4" MIN. DIA. APPROVED COBBLES 0.2 FT BELOW CURB OPENINGS FOR DISTANCE OF 2 FT EITHER SIDE OF CURB OPENINGS AT 8" DEEP.
PLACE GEOTEXTILE BETWEEN COBBLES AND NATIVE SOIL FOR EROSION CONTROL MIRAFI 140N PERMEABLE FABRIC
IF NATIVE MATERIAL IS USED FOR SIDESLOPE, RELATIVE COMPACTION OF SUBGRADE TO BE SIMILAR TO ADJOINING NATIVE SOILS 3:1 SIDE SLOPE
CLEANOUT WITH CAP AT FIN. GRADE
18" WIDE CURB OPENING SEE PLAN FOR LOCATION
2"
6" MIN
NATIVE SOIL 2% MINIMUM SLOPE TO UNDERDRAIN
18"
12"
UNDERDRAIN CLEANOUT WITH RIM TO FG. PVC RISER SHALL BE THE SAME AS MAIN PIPE DIAMETER BUT NOT LARGER THAN 6"
18" BIOTREATMENT SOIL MIX (BSM) PER ATTACHMENT L OF THE C.3 STORMWATER TECHNICAL GUIDANCE DATED MAY 14, 2013 (INFILTRATION RATE 5–10 INCH/HR)
4" DIA. PERFORATED PVC UNDERDRAIN (S=0.50% MIN) @ 6' O.C., WITH PERFORATIONS POINTING DOWN. PROVIDE CLEANOUTS AT FINISH GRADE LOCATED AT BEGINNING OF LINE AND AS REQUIRED BY INDUSTRY STDS. EXTEND GRAVEL LAYER AS NEEDED (12" MIN WIDTH) TO WRAP UNDERDRAIN WHEN IT DROPS BELOW ROCK LAYER.
12" CLASS 2 PERMEABLE MATERIAL PER CALTRANS SPECIFICATIONS
NATIVE SOIL DO NOT COMPACT
SOLID STORMDRAIN PIPE (SIZE & SLOPE PER PLANS)
BIORETENTION SYSTEM
N.T.S.
1

APPENDIX F

Operations and Maintenance Plan

Stormwater Treatment Measures Operation and Maintenance Plan

Chick-fil-A FSR #04483

City of Milpitas, California

Project Address: 755 E Calaveras, Milpitas, CA 95035

Assessor's Parcel No.: 02812013

Property Owner: Chick-fil-A, Inc Phone No.:

Designated Contact: Keith Gilbert Phone No.: (404) 765-8038

Mailing Address: 15635 Alton Parkway, Suite 350, Irvine, CA 92618

The property contains two (2) BMPs, located as described below and as shown in the attached Stormwater Control Plan. A summary of the BMPs is below:

- **BMP No. 1** is a bioretention area, located along the northeast property corner, northeast of the restaurant.
- **BMP No. 2** is a bioretention area, located at the center of parking lot.

I. Routine Maintenance Activities

The principal maintenance objective is to prevent sediment buildup and clogging within the BMPs, which reduces pollutant removal efficiency and may lead to bioretention area failure and to ensure that water flows unimpeded into the flow-through planter and landscaping remains attractive in appearance. Routine maintenance activities are described below, and the frequency at which they will be conducted are shown in Table 1.

A. Bioretention Basins

Primary maintenance activities include vegetation management and sediment removal. Mosquito control is also a concern in extended detention basins that are designed to include pools of standing water. The typical maintenance requirements include:

- Conduct semi-annual inspection as follows:
  1. Evaluate the health of the vegetation. Replace and amend plants and soils as necessary to ensure the planters are effective and attractive. Plants must remain healthy and trimmed if overgrown. Soils must be maintained to efficiently filter the storm water.
  2. Visually inspect for ponding water to ensure that filtration is occurring.
  3. After all major storm events, remove any trash and debris, inspect drain pipes and bubble-up risers for obstructions, and remove if necessary.
  4. Inspect the outlet, embankments, dikes, berms, and side slopes for structural integrity and signs of erosion or rodent burrows. Fill in any holes detected in the side slopes.

5. Examine outlets and overflow structures and remove any debris plugging the outlets.
6. General landscape maintenance, including pruning and cleanup.
7. Identify and minimize any sources of sediment and debris. Check rocks or other erosion control and replace, if necessary.
8. Excavate, clean and or replace filter media (sand, gravel, topsoil) to ensure adequate infiltration rate.

- Maintenance activities at the bottom of the basin shall NOT be performed with heavy equipment, which would compact the soil and limit infiltration.
- Harvest vegetation annually, during the summer.
- Irrigate throughout the dry season. Irrigation will be provided with sufficient quantity and frequency to allow plants to thrive
- Trim vegetation at beginning and end of the wet season and inspect monthly to prevent establishment of woody vegetation and for aesthetic and mosquito control reasons.
- Dead vegetation shall be removed to maintain less than 10% of area coverage or when vegetative filter strip function is impaired. Vegetation shall be replaced immediately to control erosion where soils are exposed and within 3 months to maintain cover density.
- Avoid the use of pesticides and quick release synthetic fertilizers and follow the principles of integrated pest management (IPM). Check with the local jurisdiction for any local policies regarding the use of pesticides and fertilizers.
- Remove sediment from the forebay when the sediment level reaches the level shown on the fixed vertical sediment marker.
- Remove accumulated sediment and regrade about every 10 years or when the accumulated sediment volume exceeds 10 % of the basin volume.
- Storm drain clean out structures and pipe layout can be found in Appendix D. Storm drain facilities should be cleaned out once a year.

Table 1 Routine Maintenance Activities for Bioretention Areas		
No.	**Maintenance Task**	**Frequency of Task**
1	Remove obstructions, debris and trash from bioretention area and dispose of properly.	Monthly, or as needed after storm events
2	Inspect bioretention area to ensure that it drains between storms and within five days after rainfall. If ponded water does not drain within five days, check if drains are clogged or consider removing the surface biotreatment soil and replacing with the approved soil mix and replant	Monthly, or as needed after storm events
3	Inspect inlets for channels, soil exposure or other evidence of erosion. Clear obstructions and remove sediment.	Monthly, or as needed after storm events
4	Remove and replace all dead and diseased vegetation.	Twice a year
5	Maintain vegetation and the irrigation system. Prune and weed to keep bioretention area neat and orderly in appearance.	Before wet season begins, or as needed
6	Inspect and, if needed, add mulch before the wet season begins. It is recommended that composted arbor mulch be applied once a year to maintain a 3" depth of mulch over all bare soil areas except within six inches of tree trunks.	Before wet season begins, or as needed
7	Inspect bioretention area using the attached inspection checklist.	Monthly, or after large storm events, and after removal of accumulated debris or material

II. Prohibitions

Do not use pesticides or other chemical applications to treat diseased plants, control weeds or removed unwanted growth. Employ non-chemical controls (biological, physical and cultural controls) to treat a pest problem. Prune plants properly and at the appropriate time of year. Provide adequate irrigation for landscape plants. Do not over water.

III. Mosquito Abatement

Standing water should not remain in the treatment measures for more than five days, to prevent mosquito generation. Should any mosquito issues arise, contact the Santa Clara County Vector Control District (SCCVCD), as needed for assistance. Mosquito larvicides should be applied only when absolutely necessary, as indicated by the SCCVCD, and then only by a licensed professional or contractor. Contact information for SCCVCD is provided below.

Santa Clara County Vector Control District
1580 Berger Drive
San Jose, CA 95112
PH:(408) 918-4770

IV. Inspections

The attached Bioretention Area Inspection and Maintenance Checklist should be used to conduct inspections monthly (or as needed), identify needed maintenance, and record maintenance that is conducted.

V. Statement of Ownership and Responsibility for Maintenance in Perpetuity

The owner accepts responsibility for interim operation and maintenance of stormwater treatment and flow-control facilities until such time as this responsibility is formally transferred to a subsequent owner. Once the owner transfers the property, its successors-in-interest shall bear the aforementioned responsibility to implement and amend this Plan.

I hereby certify, under penalty of perjury, that as the owner, I accept responsibility for the operation and maintenance of the stormwater facilities described herein this report.

Keith Gilbert — 8/26/2021

Signature of Property Owner or Other Responsible Party — Date

Keith Gilbert
Type or Print Name

Chick-fil-A, Inc.
Company Name

15635 Alton Parkway, Suite 350, Irvine CA 92618
Address

Phone number: (562) 505-5540 Email: Keith.gilbert@cfacorp.com

APPENDIX G

Annual Reporting Tables

Stormwater Treatment Measures Operation and Maintenance Annual Reporting Tables

Chick-fil-A FSR #04483

City of Milpitas, California

This report and attached Inspection and Maintenance Checklists document the inspection and maintenance conducted for the identified stormwater treatment measure(s) subject to the Maintenance Agreement between the City and the property owner during the annual reporting period indicated below.

I. Property Information:

Property Address or APN: 02812013

Property Owner: Chick-fil-A; Attn: Keith Gilbert

II. Contact Information:

Name of person to contact regarding this report:

Phone number of contact person: Keith Gilbert Email:

Address to which correspondence regarding this report should be directed:

15635 Alton Parkway, Suite 350,

Irvine, CA 92618

III. Reporting Period:

This report, with the attached completed inspection checklists, documents the inspections and maintenance of the identified treatment measures during the time period from _____ _____ to_____.

IV. Stormwater Treatment Measure Information:

The following stormwater treatment measures (identified treatment measures) are located on the property identified above and are subject to the Maintenance Agreement:

Identifying Number of Treatment Measure	Type of Treatment Measure	Location of Treatment Measure on the Property
BMP #1	Bioretention	Northeast property corner
BMP #2	Bioretention	Center of parking lot

V. Summary of Inspections and Maintenance:

Summarize the following information using the attached Inspection and Maintenance Checklists:

Identifying Number of Treatment Measure	Date of Inspection	Operation and Maintenance Activities Performed and Date(s) Conducted	Additional Comments
BMP #1			
BMP #2			

VI. Sediment Removal:

Total amount of accumulated sediment removed from the stormwater treatment measure(s) during the reporting period:___cubic yards.

How was sediment disposed?

A. landfill

B. other location on-site as described in and allowed by the maintenance plan

C. other, explain _____

VII. Inspector Information:

The inspections documented in the attached Inspection and Maintenance Checklists were conducted by the following inspector(s):

Inspector Name and Title	Inspector's Employer and Address

Certification:

I hereby certify, under penalty of perjury, that the information presented in this report and attachments is true and complete:

Keith Gilbert

Signature of Property Owner or Other Responsible Party

8/26/2021

Date

Keith Gilbert

Type or Print Name

Chick-fil-A, Inc.

Company Name

15635 Alton Parkway, Suite 350, Irvine CA 92618

Address

Phone number: (562) 505-5540

Email: Keith.gilbert@cfacorp.com

APPENDIX H

Stormwater Treatment Facilities Inspection & Maintenance Log

Bioretention Area Inspection and Maintenance Checklist

Property Address: 755 E Calaveras, Milpitas, CA 95035 Property Owner: Chick-fil-A, Attn: Keith Gilbert

Treatment Measure No.: BMP #1 Date of Inspection: _____ Type of Inspection: Monthly Pre-Wet Season After heavy runoff End of Wet Season

Inspector(s):_____ Other:_____

Defect	**Conditions When Maintenance Is Needed**	**Maintenance Needed? (Y/N)**	**Comments** (Describe maintenance completed and if needed maintenance was not conducted, note when it will be done)	**Results Expected When Maintenance Is Performed**
1. Standing Water	When water stands in the bioretention area between storms and does not drain within five days after rainfall.			There should be no areas of standing water once inflow has ceased. Any of the following may apply: sediment or trash blockages removed, improved grade from head to foot of bioretention area, or added underdrains.
2. Trash and Debris Accumulation	Trash and debris accumulated in the bioretention area.			Trash and debris removed from bioretention area and disposed of properly.
3. Sediment	Evidence of sedimentation in bioretention area.			Material removed so that there is no clogging or blockage. Material is disposed of properly.
4. Erosion	Channels have formed around inlets, there are areas of bare soil, and/or other evidence of erosion.			Obstructions and sediment removed so that water flows freely and disperses over a wide area. Obstructions and sediment are disposed of properly.
5. Vegetation	Vegetation is dead, diseased and/or overgrown.			Vegetation is healthy and attractive in appearance.
6. Mulch	Mulch is missing or patchy in appearance. Areas of bare earth are exposed, or mulch layer is less than 3 inches in depth.			All bare earth is covered, except mulch is kept 6 inches away from trunks of trees and shrubs. Mulch is even in appearance, at a depth of 3 inches.
7. Miscellaneous	Any condition not covered above that needs attention in order for the bioretention area to function as designed.			Meet the design specifications.

Bioretention Area Inspection and Maintenance Checklist

Property Address: 755 E Calaveras, Milpitas, CA 95035 Property Owner: Chick-fil-A, Attn: Keith Gilbert

Treatment Measure No.: BMP #2 Date of Inspection: _____ Type of Inspection: Monthly Pre-Wet Season After heavy runoff End of Wet Season

Inspector(s):_____ Other:_____

Defect	**Conditions When Maintenance Is Needed**	**Maintenance Needed? (Y/N)**	**Comments** (Describe maintenance completed and if needed maintenance was not conducted, note when it will be done)	**Results Expected When Maintenance Is Performed**
1. Standing Water	When water stands in the bioretention area between storms and does not drain within five days after rainfall.			There should be no areas of standing water once inflow has ceased. Any of the following may apply: sediment or trash blockages removed, improved grade from head to foot of bioretention area, or added underdrains.
2. Trash and Debris Accumulation	Trash and debris accumulated in the bioretention area.			Trash and debris removed from bioretention area and disposed of properly.
3. Sediment	Evidence of sedimentation in bioretention area.			Material removed so that there is no clogging or blockage. Material is disposed of properly.
4. Erosion	Channels have formed around inlets, there are areas of bare soil, and/or other evidence of erosion.			Obstructions and sediment removed so that water flows freely and disperses over a wide area. Obstructions and sediment are disposed of properly.
5. Vegetation	Vegetation is dead, diseased and/or overgrown.			Vegetation is healthy and attractive in appearance.
6. Mulch	Mulch is missing or patchy in appearance. Areas of bare earth are exposed, or mulch layer is less than 3 inches in depth.			All bare earth is covered, except mulch is kept 6 inches away from trunks of trees and shrubs. Mulch is even in appearance, at a depth of 3 inches.
7. Miscellaneous	Any condition not covered above that needs attention in order for the bioretention area to function as designed.			Meet the design specifications.

APPENDIX B

Geotechnical Investigation

RED

Geotechnical Engineering Exploration and Analysis

Proposed Chick-fil-A Restaurant #4483
Calaveras and Hillview FSU
755 East Calaveras Boulevard
Milpitas, California

Prepared for:

Chick-fil-A, Inc.
Irvine, California

Prepared by:

Giles Engineering Associates, Inc.

September 4, 2020
Project No. 2G-1904001-R

GILES ENGINEERING ASSOCIATES, INC.

GILES
ENGINEERING ASSOCIATES, INC.
GEOTECHNICAL, ENVIRONMENTAL & CONSTRUCTION MATERIALS CONSULTANTS

• Atlanta, GA
• Dallas, TX
• Los Angeles, CA
• Manassas, VA
• Milwaukee, WI

September 4, 2020

Chick-fil-A, Inc.
15635 Alton Parkway, Suite 350
Irvine, California 92618

Attention: Ms. Brenda Porrazzo
Development Coordinator

Subject: Geotechnical Engineering Exploration and Analysis
Proposed Chick-fil-A Restaurant #4483
Calaveras and Hillview FSU
755 East Calaveras Boulevard
Milpitas, California
Project No. 2G-1904001-R

Dear Ms. Porrazzo:

Giles Engineering Associates, Inc. (Giles) is pleased to present our *Geotechnical Engineering Exploration and Analysis* report prepared for the above-referenced project. Conclusions and recommendations developed from the exploration and analysis are discussed in the accompanying report.

We appreciate the opportunity to be of service on this project. If we may be of additional assistance, should geotechnical related problems occur or to provide construction observation and testing services, please do not hesitate to call at any time.

Respectfully submitted,

GILES ENGINEERING ASSOCIATES, INC.

REGISTERED PROFESSIONAL ENGINEER
MONICA LAUREN SELL
C 89833
EXP. 6-30-21
CIVIL
STATE OF CALIFORNIA

Monica L. Sell, P.E.
Project Engineer I

REGISTERED PROFESSIONAL ENGINEER
JOHN LUKE MAIER
GE 3135
EXP. 12-31-21
GEOTECHNICAL
STATE OF CALIFORNIA

John L. Maier, P.E., G.E.
Branch Manager

Distribution: Chick-fil-A, Inc.
Attn: Ms. Brenda Porrazzo(email: Brenda.Porrazzo@cfacorp.com)
Attn: Mr. Steve Schwartz(email: Steve.Schwartz@cfacorp.com)
Attn: Ms. Vicky Burke (email: Vicky.Burke@accesscfa.com)
Attn: Mr. Vance Burgess (email: Vance.Burgess@cfacorp.com)

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PROPOSED CHICK-FIL-A RESTAURANT #4483
CALAVERAS AND HILLVIEW FSU
755 EAST CALAVERAS BOULEVARD
MILPITAS, CALIFORNIA
PROJECT NO. 2G-1904001

Description Page No.

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GEOTECHNICAL ENGINEERING EXPLORATION AND ANALYSIS

PROPOSED CHICK-FIL-A RESTAURANT #4483
CALAVERAS AND HILLVIEW FSU
755 EAST CALAVERAS BOULEVARD
MILPITAS, CALIFORNIA
PROJECT NO. 2G-1904001-R

1.0 EXECUTIVE SUMMARY OUTLINE

The executive summary is provided solely for purposes of overview. Any party who relies on this report must read the full report. The executive summary omits a number of details, any one of which could be crucial to the proper application of this report.

Subsurface Conditions

- Site Class designation D is recommended for seismic design considerations.
- Existing pavement encountered within our test borings consisted of approximately 6 ½ to 7 inches of asphaltic concrete over 3 inches of aggregate base materials.
- Possible native and native soils encountered underneath the pavement generally consisted of damp to wet, firm to hard silty clay, and medium dense fine to medium sand and clayey sand. The presence of fill at the site was not distinctly identified in our test borings due to the onsite soils relatively homogenous composition but could be at depths of about 2 feet below existing ground surface and deeper in areas of below ground structures.
- Groundwater was encountered at a depth of about 11 feet below existing grade during our subsurface exploration.
- Tested onsite soils generally possess a low to medium expansion potential.
- Tested on-site soils have moderate corrosive potential when in contact with ferrous materials.

Site Development

- The proposed site development will include the construction of a new Chick-fil-A single-story building and site improvements that will include drive-thru lane, new parking stalls, menu board signs, a new trash enclosure, new concrete walkways, and new planter areas.
- Demolition of the existing building should include removal of all foundations, floor slabs and any other below grade construction. Soils disturbed by the demolition operations should be removed and stockpiled for future use.
- Due to the presence of variable strength and low to medium expansive characteristics of the near surface onsite soils and the likely disturbance of the soils during removal of existing building, it is recommended that the soils within the proposed new building area and an appropriate distance beyond (5 feet minimum) be overexcavated to a depth of at least 2 feet below existing grade or planned pad grade, and at least 1 foot below the bottom of foundations and floor slab whichever is lower in elevation. The soils exposed at the base of this recommended over-excavation should be examined by the geotechnical engineer to document that the soils are suitable for building support. Depending on examination by the geotechnical engineer, deeper removals may be warranted. Prior to placement of fill, the exposed surfaces approved for fill placement should first be scarified to a depth of at least 10 inches, water conditioned or air dried as required to about 2 to 4 percent above the optimum moisture content and then recompacted to at least 90% of the maximum dry density as determined by Modified Proctor (ASTM D 1557-00).
- Percolation tests indicated that the site is not suitable for infiltration.

Building Foundation

- The proposed structures may be supported by a shallow spread footing foundation system supported on structural compacted fill designed for a maximum, net allowable soil bearing pressure of 3,000 pounds per square foot (psf).
- Minimum reinforcing in the strip footings is recommended to consist of four No. 5 bars (2 top and 2 bottom).

Building Floor Slab

- It is recommended that on grade slab be a minimum 4 inch thick slab-on-grade or turned-down slab, supported on a properly prepared subgrade.
- A minimum 10-mil vapor retarder is recommended to be directly below the floor slab or base course where required to protect moisture sensitive floor coverings.
- Minimum slab reinforcing is recommended to consist of No. 3 rebars spaced at 18 inches on center, each way.

New Pavement

- Asphalt Pavements: 3 inches of asphaltic concrete underlain by 6 or 9 inches of base course in parking stalls and drive lane areas, respectively.
- Portland Cement Concrete: 6 inches in thickness underlain by 4 inches of base course in high stress areas such as entrance/exit aprons, trash enclosure-loading zone, and the drive through area.

RED – This site has been given a Red designation due to increased costs associated with building pad preparation as well as the presence of damp to very moist and low to medium expansive near surface on-site soils that may result in additional subgrade preparation costs

2.0 SCOPE OF SERVICES

This report provides the results of the *Geotechnical Engineering Exploration and Analysis* that Giles Engineering Associates, Inc. ("Giles") conducted regarding the proposed development. The *Geotechnical Engineering Exploration and Analysis* included several separate, but related, service areas referenced hereafter as the Geotechnical Subsurface Exploration Program, Geotechnical Laboratory Services, and Geotechnical Engineering Services. The scope of each service area was narrow and limited, as directed by our client and in consideration of the proposed project. The scope of each service area is briefly explained in this report. The scope of work performed for this report was consistent with the scope of work outlined within Proposal No. 2GEP-1903026.

Geotechnical-related recommendations for design and construction of the foundation and ground-bearing floor slab for the proposed building are provided in this report. Geotechnical-related recommendations are also provided for the proposed parking lot improvement. Site preparation recommendations are also given; however, those recommendations are only preliminary since the means and methods of site preparation will depend on factors that were unknown when this report was prepared. Those factors include the weather before and during construction, the water table at the time of construction, subsurface conditions that are exposed during construction, and finalized details of the proposed development.

Giles conducted a Phase I Environmental Site Assessment (ESA) for the subject site. The results of that assessment were provided under separate cover.

3.0 SITES AND PROJECT DESCRIPTION

3.1 Site Description

A new Chick-fil-A restaurant is to be constructed at 755 East Calaveras Boulevard in the City of Milpitas, California. The subject site is currently developed with a single-story building occupied by two tenants, Jenny Craig and Big 5 Sporting Goods, with associated parking lot. The site is bordered on the south by East Calaveras Boulevard, on the west by a parking lot, on the north by a parking lot and large commercial building, and on the east by North Hillview Drive.

The existing parking lot within the site is considered to be in fair condition. The property is situated at approximately latitude 37.4339^{o} North and longitude -121.8939^{o} West.

Other existing improvements include concrete curb and gutter, concrete walkways, landscape areas and underground utilities.

Based upon a review of the ALTA/NSPS land title survey prepared by PBLA Surveying, elevations at the site range from El. 25 feet along the northern property boundary to El. 28 feet along the southern property boundary. The site slopes slightly to the northwest.

3.2 Proposed Project Description

The proposed development includes the demolition of the existing building for the construction of a new, single-story Chick-fil-A restaurant building to be located partially within the existing building footprint. Although detailed building plans are not yet ready for our review, the new building will be a single-story wood-frame structure, 4,833 square feet, with no basement or underground levels. We were not provided with specific loading information for this project at the time of this report; however, based on previous Chick-fil-A projects, we expect maximum combined dead and live loads supported by the bearing walls and columns of 2 to 3 kips per lineal foot (klf) and 40 to 50 kips, respectively. The live load supported by the floor slab is expected to be a maximum of 100 pounds per square foot (psf).

Other planned improvements include a drive-thru lane, new parking stalls, menu board signs, a new trash enclosure, new concrete walkways, and new planter areas.

According to the Preliminary Conceptual Grading Plan, prepared by Kimley-Horn & Associates, dated August 7, 2019, the planned finish floor elevation for the proposed building will be at El. 27.36 feet. Therefore, site grading will consist of minor cut and fill (less than 1 foot) in order to establish the necessary site grade to accommodate the planned floor elevation exclusive of site preparation or over-excavation requirements necessary to create a stable site suited for the proposed development.

The traffic loading on the proposed parking lot improvement is understood to predominantly consist of automobiles with occasional heavy trucks resulting from deliveries and trash removal. The parking lot pavement sections have been designed on the basis of daily traffic intensity equivalent to five 18-kip single axle loads and 1,500 automobiles within the main drive lanes and only automobiles of a lesser intensity within the parking stalls. Pavement designs are based on a 20-year design period. Therefore, the parking lot pavement sections have been designed on the basis of a Traffic Index (TI) of 4.5 for the automobile traffic parking stalls (light duty) and a TI of 5.5 for drive lane areas (medium duty).

4.0 SUBSURFACE EXPLORATION

4.1 Subsurface Exploration

Our subsurface exploration consisted of the drilling of five (5) test borings to depths of approximately 5 to 41-½ feet below existing ground surfaces. The approximate test boring locations are shown in the Test Boring Location Plan (Figure 1). The Test Boring Location Plan and Test Boring Logs (Records of Subsurface Exploration) are enclosed in Appendix A. Field and laboratory test procedures and results are enclosed in Appendix B and C, respectively. The terms and symbols used on the Test Boring Logs are defined on the General Notes in Appendix D.

Our subsurface exploration included the collection of relatively undisturbed samples of subsurface soil materials for laboratory testing purposes in accordance with ASTM D 3550, Standard Practice for Thick Wall, Ring-Lined, Split Barrel, Drive Sampling of Soils. Bulk samples consisted of composite soil materials obtained at selected depth intervals from the borings. The sampler was driven with successive 30-inch drops of a hydraulically operated, 140-pound automatic trip hammer. Blow counts for each 6-inch driving increment were recorded on the field exploration logs with the number of blows required to drive the standard split-spoon sampler for the last 12 of the 18 inches reported. The central portions of the driven core samples were placed in sealed containers and transported to our laboratory for testing.

Where deemed appropriate, standard split-spoon tests (SS), also called Standard Penetration Test (SPT), were also performed at selected depth intervals in accordance with the American Society for Testing Materials (ASTM) Standard Procedure D 1586. This method consists of mechanically driving an unlined standard split-barrel sampler 18 inches into the soil with successive 30-inch drops of the 140-pound automatic trip hammer. Blow counts for each 6-inch driving increment were recorded on the exploration logs. The number of blows required to drive the standard split-spoon sampler for the last 12 of the 18 inches was identified as the uncorrected standard penetration resistance (N). Disturbed soil samples from the unlined standard split-spoon samplers were placed in plastic bags and transported to our laboratory for testing.

4.2 Subsurface Conditions

The subsurface conditions as subsequently described have been simplified somewhat for ease of report interpretation. A more detailed description of the subsurface conditions at the test boring locations is provided by the logs of the test borings enclosed in Appendix B of this report.

Pavement

Existing pavement encountered within our test borings consisted of approximately 6 ½ to 7 inches of asphaltic concrete over 3 inches of aggregate base materials. Based on our visual observation, the existing pavement is in fair condition.

Soil

Possible native and native soils encountered underneath the pavement generally consisted of dry to wet, firm to hard silty clay, and medium dense fine to medium sand and clayey sand. The presence of fill at the site was not distinctly identified in our test borings due to the onsite soils relatively homogenous composition but could be at depths of about 2 feet below existing ground surface and deeper in areas of below ground structures.

Groundwater

Groundwater was encountered at a depth of about 11 feet below existing grade during our subsurface exploration. However, fluctuations of the groundwater table, localized zones of perched water, and rise in soil moisture content should be anticipated during and after the rainy season. Irrigation of landscape areas on or adjacent to the site could also cause fluctuations of local or shallow perched groundwater levels.

4.3 Percolation Testing

It is our understanding that an on-site below grade storm water infiltration system is being considered for the subject site. Therefore, one percolation test was performed to assess the infiltration characteristics of the site soils in accordance with infiltration test methods performed in general accordance with USBR 7300-89.

The percolation testing consisted of drilling a four (4) inch diameter hole using a solid-stem auger, installing a 2-inch-diameter slotted pvc casing with a solid end cap and then surrounding the casing with a granular filter pack. Clean sand was used as the filter pack. The test hole (B-1) was then pre-soaked. After pre-soaking, test water was added to the casing to a minimum depth of 1 foot above the bottom of the casing. After pre-soaking, test water was added to the casing and refilled after each consecutive percolation test reading. The drop in water level over time is the pre-adjusted percolation rate at the test location. The pre-adjusted percolation rate is generally reduced to account for the discharge of water from both the sides and bottom of the boring. The formula below was used to calculate for the tested infiltration rate.

Infiltration Rate = Pre-adjusted Percolation Rate divided by Reduction Factor

Where the reduction factor (R_f) is given by:

$R_f = (2di - \Delta d/ dia) + 1$

With: di = initial water depth (in.)
Δd = average/final water level drop (in.)
Dia = diameter of the boring (in.)

The results obtained from our percolation testing are summarized below.

TABLE 1 – PERCOLATION TEST RESULTS

Test Hole	Test Depth[1] (feet)	Pre-Adjusted Percolation Rate (in/hr)	Infiltration Rate (in/hr)	Soil Type
B-1	5.0	0	0	Silty Clay

1) Depth is referenced to the existing surface grade at the test location.

It should be noted that the infiltration rate of the on-site soils represents a specific area and depth tested and may fluctuate throughout other parts of the site.

5.0 LABORATORY TESTING

Several laboratory tests were performed on selected samples considered representative of those encountered in order to evaluate the engineering properties of the on-site soils. The following are brief description of our laboratory test results.

In Situ Moisture and Density

Tests were performed on select samples from the test borings to determine the subsoils dry density and natural moisture contents in accordance with Test Method ASTM 2216-05. The results of these tests are included in the Test Boring Logs enclosed in Appendix A.

Expansive Potential

To evaluate the expansive potential of the near surface soils encountered during our subsurface exploration, 2 composite samples (clayey sand, and silty clay) collected from Test Boring B-4 and B-5 (1 to 5 feet) were both subjected to Expansive Index (EI) testing in accordance with Test Method ASTM D 4829-08a. The results of our expansion index (EI) test indicates that the near surface clayey sand sample has a low expansion potential (EI= 22), with the silty clay sample resulting in a medium expansion index (EI = 80).

Atterberg Limits

The Atterberg Limits (liquid limit, plastic limit and plasticity index) were determined for a representative sample of the on-site soils collected from Test Boring B-4 in accordance with Test Method ASTM D 4318-00. The result of the Atterberg Limits is included on the Boring Logs enclosed in Appendix A.

Consolidation Test

Settlement predictions under anticipated loads were made on the basis of a one-dimensional consolidation test. This test was performed in general conformance with Test Method ASTM D 2435. The test sample was inundated in order to evaluate the sudden increase in moisture condition (collapse/swell potential). Results of this test indicated that the tested sample has a slight swell potential (0.5%). The results of the consolidation test are graphically presented as Figure 2 in Appendix A.

Soluble Sulfate Analysis and Soil Corrosivity

A representative sample of the near surface soils which may contact shallow buried utilities and structural concrete was performed to determine the corrosion potential for buried ferrous metal conduits and the concentrations present of water soluble sulfate which could result in chemical attack of cement. The following table presents the results of our laboratory testing.

Parameter	**B-4/B-5 1 to 5 feet**
pH	7.65
Chloride	33 ppm
Sulfate	0.032%
Resistivity	3,300 ohm-cm

The chloride content of near-surface soils was determined for a selected sample in accordance with California Test Method No. 422. The results of this test indicated that tested on-site soils have a Low exposure to chloride.

The results of limited testing of soil pH and minimum resistivity were determined in accordance with California Test Method No. 643. The test results for pH indicated the tested soil was slightly alkaline. The results from the minimum resistivity test on a near surface bulk sample from the site generally indicate that the tested on-site soils have a moderate corrosive potential when in contact with ferrous materials. Therefore, special protection for underground cast iron pipe or ductile pipe may be warranted depending on the actual materials in contact with the pipe. We recommend that a corrosion engineer review these results in order to provide specific recommendations for corrosion protection as well as appropriate recommendations for other types of buried metal structures.

A representative sample of the near surface soils which may contact shallow buried utilities and structural concrete was performed to determine the concentrations present of water soluble sulfate which could result in chemical attack of cement. Our laboratory test data indicated that near surface soils contain approximately 0.032 percent of water soluble sulfates. Based on Section 1904.1 of the 2019 California Building Code (CBC), concrete that may be exposed to sulfate containing soils shall comply with the provisions of ACI 318-11, Section 4.3. Therefore, according to Table 4.3.1 of the ACI 318-11 a negligible exposure to sulfate can be expected for concrete placed in contact with the tested on-site soils. No special sulfate resistant cement is considered necessary for concrete which will be in contact with the tested on-site soils.

6.0 GEOLOGIC AND SEISMIC HAZARDS

6.1 Active Fault Zones

Research of available maps published by the California Geological Survey (CGS) indicates that the subject site is not located within an Alquist-Priolo Earthquake Fault Zone. The potential for fault rupture through the site is, therefore, considered to be low. The site may however be subject to strong groundshaking during seismic activity.

6.2 Seismic Hazard Zones

According to the Seismic Hazard Zone report for the Milpitas Quadrangle published by the CGS, the site is located within a liquefaction hazard zone. Additionally, as noted within the Seismic Hazard Zone Report, the historic high groundwater is anticipated to be about 8 feet below grade. Therefore, liquefaction analysis is deemed necessary for this site.

General types of ground failures that might occur as a consequence of severe ground shaking typically include landsliding, ground subsidence, ground lurching and shallow ground rupture. The probability of occurrence of each type of ground failure depends on the severity of the earthquake, distance from faults, topography, subsoils and groundwater conditions, in addition to other factors. Based on our subsurface exploration and the seismic designation for this site, all of the above effects of seismic activity are considered unlikely at the site.

7.0 CONCLUSIONS AND RECOMMENDATIONS

Conditions resulting from the proposed development have been evaluated on the basis of the assumed floor elevation and engineering characteristics of the subsurface materials encountered during our subsurface investigation and their anticipated behavior both during and after construction. Conclusions and recommendations presented for the design of foundations and floor slab, along with site preparation recommendations and construction considerations are discussed in the following sections of this report.

From a soils engineering point of view, the subject property is considered geotechnically suitable for the proposed new improvements provided the following recommendations are incorporated in the design and construction of the project.

We recommend that Giles Engineering Associates, Inc. be involved in the review of the grading and foundation plans for the site to ensure our recommendations are interpreted correctly. Based on the results of our review, modifications to our recommendations or the plans may be warranted.

Effect of Proposed Grading and Construction on Adjacent Property

It is our opinion that the proposed construction and grading will be safe against geotechnical hazards from landslides, settlement, or slippage and the proposed work will not adversely affect the geologic stability of the adjacent property provided grading and construction are performed in compliance with the city code and in accordance with the recommendations presented herein.

7.1 Seismic Design Considerations

Faulting/Seismic Design Parameters

Research of available maps published by the California Geological Survey (CGS) indicates that the subject site is not located within an Alquist-Priolo Earthquake Fault Zone. The potential for fault rupture through the site is, therefore, considered to be low. The site may however be subject to strong groundshaking during seismic activity. The proposed structure should be designed in accordance with the current version of the *California Building Code (CBC)* and applicable local codes. In accordance with *ASCE 7*, Chapter 20, a Site Classification D is recommended for this site based upon the mapped geological features of the site also verified by test borings.

According to the maps of known active fault near-source zones (ICBO, 1998) to be used with the CBC, the Hayward-Rodgers Creek and Calaveras faults are the closest known active faults and are located about 2.74 mi and 4.74 mi, respectively, from the site. The Hayward-Rodgers Creek fault would probably generate the most severe site ground motions at the site with an anticipated maximum moment magnitude (Mw) of 7.33.

The proposed structure should be designed in accordance with the current version of the *California Building Code (CBC)*, *Minimum Design Loads and Associated Criteria for Buildings and Other Structures ASCE 7*, and applicable local codes. The following values are determined by using the SEAOC/OSHPD Seismic Design Map Tool based upon the *CBC 2019* and *ASCE 7-16*.

CBC 2019, Earthquake Loads	
Site Class Definition (Table 20.3-1)	D
Mapped Spectral Response Acceleration Parameter, S_s (for 0.2 second)	2.147
Mapped Spectral Response Acceleration Parameter, S_1 (for 1.0 second)	0.829
Site Coefficient, F_a short period	1.0
Site Coefficient, F_v 1-second period	1.7
Adjusted Maximum Considered Earthquake Spectral Response Acceleration Parameter, S_{MS}	2.147
Adjusted Maximum Considered Earthquake Spectral Response Acceleration Parameter, S_{M1}	1.409
Design Spectral Response Acceleration Parameter, S_{DS}	1.431
Design Spectral Response Acceleration Parameter, S_{D1}	0.939

According to Section 11.4.7 of ASCE 7-16, a ground motion hazard analysis is required and should be performed in accordance with Section 21.2 for structures on Site Class D with S_1 greater than or equal to 0.2. However, as an exception to performing the ground motion hazard analysis, the value of the Seismic Response Coefficient (Cs) must be determined by Equation

(12.8-2) for values of the fundamental period of the building (T) ≤ 1.5Ts, and taken as 1.5 times the value computed in accordance with either Equation (12.8-3) for T_L ≥ 1.5Ts, or Equation (12.8-4) for T > T_L.

Liquefaction

Our review of the Seismic Hazard Zone Report for the Milpitas Quadrangle indicates that the site is located within a liquefaction hazard zone. In addition, the depth to historic high groundwater is reported to be approximately 8 feet below grade. Accordingly, a detailed liquefaction analysis was deemed appropriate and was performed.

A liquefaction analysis was performed, utilizing the computer software program LiquefyPro and based on the 2019 CBC and California Geological Survey Special Publication 117A (SP117A). For this analysis we used the soil profile identified with Test Boring B-4, a site acceleration PGA_M of 0.993g as obtained from the USGS web site and determined from ASCE7-16, and an earthquake event of 6.67 as obtained from the USGS deaggregation website.

The on-site fine grained soils (clay) were evaluated to determine susceptibility to liquefaction during ground shaking in accordance with the criteria outlined within SP117A. Soils considered to be potentially susceptible to undergo seismically induced deformation during liquefaction are classified in the following manner:

1. Plastic Index (PI) < 12 and moisture content greater than 85 percent of the Liquid Limit
2. Sensitive soils with PI > 18.
3. All very loose to medium dense granular soils.

The clayey soils obtained during our subsurface exploration were tested per the CGS Special Publication 117A guidelines. Our laboratory results showed that the on-site fine grained soils have Plastic Index (PI) of about 12 and greater, and the in-place moisture contents are less than 85 percent of the liquid limit. The soils obtained during our subsurface exploration, which were considered to possibly undergo seismically induced deformation, were tested for CGS Special Publication 117A guidelines with results in the table below. Fine grained soils with PI > 18 were tested for sensitivity per ASTM D 2166-06 and were determined non-sensitive and therefore non-liquefiable.

Test Boring No. & Depth	Liquid Limit (LL)	Plastic Index (PI)	In-situ Moisture	W_c/LL
B-4 @ 10 ft. [2]	35	20	19	0.54
B-4 @ 15 ft. [2]	30	16	23	0.77
B-4 @ 25 ft. [2]	27	16	19	0.70
B-4 @ 30 ft. [2]	35	19	21	0.60
B-4 @ 35 ft. [2]	44	29	18	0.41

[1]Potentially liquefiable
[2]Non-liquefiable.

A liquefaction analysis was performed, utilizing the computer software program LiquefyPro (version 5) and based on the 2019 CBC. Based on our analysis and under the current site conditions (with a water table of 11 feet encountered during our subsurface exploration), we estimate that the maximum total seismic-induced ground settlement at the site would be approximately 0.13 inches during the design level earthquake. Based on the results of our analysis, it is our opinion that liquefaction potential at the site is very low and not significant for the proposed development. The computer output files for the analysis are provided within Appendix A (A-1).

7.2 Site Development Recommendations

The recommendations for site development as subsequently described are based upon the conditions encountered at the test boring locations and the results of our laboratory testing and liquefaction analysis. Moist to wet soil conditions, as well as low to medium expansive on-site clay, were encountered within the near surface on-site soils during our subsurface investigation. It is expected that similar conditions are likely to be encountered during grading operations. Grading operations may require significant provisions for drying of soils prior to compaction. In addition, due to the presence of damp to very moist, clayey on-site soils at the proposed remedial grading depths, the loads imposed by heavy rubber-tired equipment during grading may induce localized pumping of the subgrade that would require stabilization. Grading contractor should therefore include contingencies for air-drying of excessively moist soil, as well as the stabilization of excavation bottoms in their bids. Imported granular soils or lime treatment may be required for excavation stabilization of replacement of on-site soils if on-site soils cannot be air-dried on site due to space, time constraints, or weather.

Site Clearing and Demolition

Clearing and demolition operations should include the removal of all landscape vegetation and existing structural features such as building footings and floor slab, asphaltic concrete pavement and concrete curbs within the area of the proposed new building and site improvements. Existing pavement within areas of proposed development should be removed or processed to a maximum 3-inch size and stockpiled for use as compacted fill or stabilizing material for the new development. Processed asphalt may be used as fill, sub-base course material, or subgrade stabilization material beyond the building perimeter. Processed concrete or existing base may be used as fill, sub-base course material, or subgrade stabilization material both within and outside of the building perimeter. Due to the moisture sensitivity and variable support characteristics of the on-site soils, the pavement is recommended to remain in-place as long as possible to help protect the subgrade from construction traffic disturbance.

Should any unusual soil conditions or subsurface structures be encountered during clearing/demolition operations or during grading, they should be brought to the immediate attention of the project geotechnical consultant for corrective recommendations.

Existing Utilities

All existing utilities should be located. Utilities that are not reused should be capped off and removed or properly abandoned in-place in accordance with city codes and ordinances. The excavations made for removed utilities that are in the influence zone of new construction are recommended to be backfilled with structural compacted fill. Underground utilities, which are to be reused or abandoned in-place, are recommended to be evaluated by the structural engineer and utility backfill is recommended to be evaluated by the geotechnical engineer, to determine their potential effect on the new development. If any existing utilities are to be preserved, construction operations must be carefully performed so as not to disturb or damage the existing utility.

Building Area

Due to the presence of variable strength and low to medium expansive characteristics of the near surface onsite soils and the likely disturbance of the soils during removal of existing building, it is recommended that the soils within the proposed new building area and an appropriate distance beyond (5 feet minimum) be overexcavated to a depth of at least 2 feet below existing grade or planned pad grade, and at least 1 foot below the bottom of foundations and floor slab whichever is lower in elevation. The soils exposed at the base of this recommended over-excavation should be examined by the geotechnical engineer to document that the soils are suitable for building support. Depending on examination by the geotechnical engineer, deeper removals may be warranted. Prior to placement of fill, the exposed surfaces approved for fill placement should first be scarified to a depth of at least 10 inches, water conditioned or air dried as required to about 2 to 4 percent above the optimum moisture content and then recompacted to at least 90% of the maximum dry density as determined by Modified Proctor (ASTM D 1557-00). A representative of the project geotechnical consultant should be present on site during grading operations to verify proper placement and adequate compaction of all fills.

Positive drainage devices such as sloped concrete flatwork, earth swales, and sheet flow gradients in landscape, setback, and easement areas should be designed for the site. The drainage system should drain to a suitable discharge area. The purpose of this drainage system is to reduce water infiltration into the subgrade soils and to direct water away from buildings and site improvements.

All utility trench backfill should be placed in lifts no greater than 12 inches in thickness, moisture conditioned and then compacted to a minimum of 90 percent of the soil's maximum density near the optimum moisture content. A representative of the project geotechnical engineer should observe, probe, and test the backfills to document adequacy of compaction.

Proofroll and Compact Subgrade

The subgrades within the new pavement areas should be proofrolled in the presence of the geotechnical engineer with appropriate rubber-tire mounted heavy construction equipment or a loaded truck to detect very loose/soft yielding soil which should be removed to a stable subgrade. Following proofrolling and completion of any necessary overexcavation, the subgrades should be scarified to a minimum depth of about 12 inches, moisture conditioned and/or air dried to 2 to 4 percent above the soil's optimum moisture content and recompacted to at least 90 percent of the Modified Proctor (ASTM D1557-00) maximum density. The upper 1 foot of the pavement subgrade should have minimum in-place density of at least 95% of the maximum dry density. The selection, placement and compaction of structural fill should be performed in accordance with the project specifications.

The Guide Specifications included in Appendix D (Modified Proctor) of this report are recommended to be used, at a minimum, as an aid in developing the project specifications. The floor slab subgrade may need to be recompacted prior to slab construction due to weather and equipment traffic effects on the previously compacted soil.

Reuse of On-site Soil

On-site very low to medium expansive (EI ≤ 91) material may be reused as structural compacted fill (if needed) within the proposed building and pavement area provided they do not contain oversized materials and significant quantities of organic matter or other deleterious materials. Care should be used in controlling the moisture content of the soils to achieve proper compaction for load bearing. All subgrade soil compaction as well as the selection, placement and compaction of new fill soils should be performed in accordance with the project specifications under engineering controlled conditions.

Subgrade Protection

The near surface soils that are expected to comprise the subgrade are sensitive to water and disturbance from construction activities. Unstable soil conditions will develop if the soils are exposed to moisture increases or are disturbed (rutted) by construction traffic. The site should be graded to prevent water from ponding within construction areas and/or flowing into excavations. Accumulated water must be removed immediately along with any unstable soil. Foundation concrete should be placed and excavations backfilled as soon as possible to protect the bearing grade. The degree of subgrade instability and associated remedial construction is dependent, in part, upon precautions taken by the contractor to protect the subgrade during site development.

Silt fences or other appropriate erosion control devices should be installed in accordance with local, state and federal requirements at the perimeter of the development areas to control sediment from erosion. Since silt fences or other erosion control measures are temporary structures, careful and continuous monitoring and periodic maintenance to remove accumulated soil and/or replacement should be anticipated.

Fill Placement

All fill should be placed in 8-inch-thick maximum loose lifts, moisture conditioned to 2 to 4 percent above the soil's optimum moisture content, and then compacted to at least 90 percent of the Modified Proctor maximum density. A representative of the project geotechnical consultant should be present on-site during grading operations to document proper placement and compaction of all fill, as well as to verify compliance with the other geotechnical recommendations presented herein.

Import Structural Fill

Any soils imported to the site (if required) for use as structural fill should consist of very low to medium expansive (EI ≤ 91) soils. Materials designated for import should be submitted to the project geotechnical engineer no less than three working days for evaluation. In addition to expansion criteria, soils imported to the site should exhibit adequate shear strength characteristics for the recommended allowable soil bearing pressure, soluble sulfate content and corrosivity and pavement support characteristics.

7.3 Construction Considerations

Construction Dewatering

Groundwater was encountered at a depth of about 11 feet below existing grade during our subsurface exploration. However, fluctuations in the groundwater table and shallower perched water conditions may occur due to seasonal precipitation and runoff characteristics of the site. Conventional filtered sump pumps placed in excavations are expected to be suitable for dewatering should any excess water conditions be observed.

Soil Excavation

Some slope stability problems may be encountered in steep, unbraced excavations considering the nature of the subsoils. All excavations must be performed in accordance with CAL-OSHA requirements, which is the responsibility of the contractor. Shallow excavations may be adequately sloped for bank stability while deeper excavations or excavations where adequate back sloping cannot be performed may require some form of external support such as shoring or bracing.

7.4 Foundation Recommendations

It is recommended that Giles review the foundation and grading plans for the site and if warranted provide recommendations as deemed appropriate.

After site clearing and completion of the building pad preparation, the proposed structure may be supported by a shallow foundation system. Footings that will support the bearing walls and isolated columns may be designed for a maximum, net, allowable soil-bearing pressure of 3,000 pounds per square foot (psf). Minimum footing widths are recommended to be 18 and 24 inches for walls and columns, respectively, regardless of the calculated soil bearing pressure. The recommended allowable soil bearing pressure may be increased by one-third for short term wind and/or seismic loads.

Reinforcing

The recommended minimum quantity of longitudinal reinforcing within new strip footings is four No. 5 bars (2 top and 2 bottom) continuous through column pads within the strip footings. The recommended quantity of longitudinal reinforcing pertains to a minimum 12-inch thick and a maximum 24-inch wide footing pad; additional reinforcing may be necessary if a thinner or wider footing pad is used to develop equivalent rigidity. Conventional reinforcing is considered suitable in isolated column pad footings. The final design of the foundations as well as performed by the project structural engineer.

Lateral Load Resistance

Lateral load resistance will be developed by a combination of friction acting at the base of foundations and slabs and the passive earth pressure developed by footings below grade. Passive pressure and friction may be used in combination, without reduction, in determining the total resistance to lateral loads. A one-third increase in the passive pressure value may be used for short duration wind or seismic loads.

A coefficient of friction of 0.35 may be used with dead load forces for footings placed on newly placed compacted fill soil. An allowable passive earth pressure of 250 psf per foot of footing depth (pcf) below the lowest adjacent grade may be used for the sides of footings placed against newly placed structural fill or competent onsite soils. The maximum recommended allowable passive pressure is 2,000 psf.

Bearing Material Criteria

Soil suitable to serve as the foundation bearing grade should exhibit at least a loose relative density (average N value of at least 8) for non-cohesive soils, and an unconfined compressive strength of 1.5 tsf for cohesive soils, for the recommended 3,000 psf allowable soil bearing pressure. For design and construction estimating purposes, suitable bearing soils are expected to be encountered at nominal foundation depths following the recommended site preparation activities. However, field testing by the Geotechnical Engineer within the foundation bearing soils is recommended to document that the foundation support soils possess the minimum strength parameters noted above. If unsuitable bearing soils are encountered, they should be recompacted in-place, if feasible, or excavated to a suitable bearing soil subgrade and to a lateral extent as defined by Item No. 3 of the enclosed Guide Specifications, with the excavation backfilled with structural compacted fill to develop a uniform bearing grade.

Foundation Embedment

The California Building Code (CBC) requires a minimum 12-inch foundation embedment depth. However, it is recommended that any new exterior foundations extend at least 18 inches below the adjacent exterior grade for bearing capacity consideration. New interior footings may be supported at nominal depth below the floor. All footings must be protected against weather and water damage during and after construction, and must be supported within suitable bearing materials.

Estimated Foundation Movement

Post-construction total and differential settlement of a shallow foundation system designed and constructed in accordance with the recommendations provided in this report are estimated to be less than ¾ and ½ inch, respectively, for static and seismic conditions. The estimated differential movement is anticipated to result in an angular distortion of about 0.002 inches per inch on the basis of a minimum clear span of 20 feet. The maximum estimated total and differential movement is considered within tolerable limits for the proposed structure provided it is considered in the structural design.

7.5 Floor Slab Recommendations

Subgrade

The floor slab subgrade should be prepared in accordance with the appropriate recommendations presented in the Site Development Recommendations section of this report. Foundation, utility trenches and other below-slab excavations should be backfilled with structural compacted fill in accordance with the project specifications.

Design

The floor of the proposed building may be designed and constructed as a conventional slab-on-grade supported on a properly prepared subgrade. If desired, the floor slab may be poured monolithically with perimeter foundations where the foundations consist of thickened sections thereby using a turned-down slab construction technique. The minimum slab reinforcing for geotechnical considerations is recommended to consist of No. 3 rebars at 18 inches on center, each way. Based on the recommended reinforcing and the assumed live loading, the slab is recommended to be a minimum of 4 inches in thickness. A qualified structural engineer should perform the actual design of the slab to ensure proper thickness and reinforcing.

The slab is recommended to be underlain by a 4-inch thick layer of granular material. A minimum 10-mil synthetic sheet should be placed below the floor slab to serve as a vapor retarder where required to protect moisture sensitive floor coverings (i.e. tile, or carpet, etc.).

The vapor retarder is recommended to be in accordance with ASTM E 1745-11, which is entitled: *Standard Specification for Plastic Water Vapor Retarders Used in Contact with Soil or Granular Fill under Concrete Slabs*. The sheets of the vapor retarder material should be evaluated for holes and/or punctures prior to placement and the edges overlapped and taped. If materials underlying the synthetic sheet contain sharp, angular particles, a layer of coarse sand (Sand Equivalent>30) approximately 2 inches thick or a geotextile should be provided to protect it from puncture. An additional 2-inch thick layer of coarse sand may be needed between the slab and the vapor retarder to promote proper curing. The sand layers above and below the synthetic sheeting may be used as a substitute for the granular material below the slab. Proper curing techniques are recommended to reduce the potential for shrinkage cracking and slab curling.

Estimated Settlement

Post-construction total and differential movements of the floor slab designed and constructed in accordance with the recommendations provided in this report are estimated to be less than ½ and ⅓ inch, respectively. Movements on the order of those estimated for foundations should be expected when the foundation and floor slab are structurally connected or constructed monolithically. The estimated differential movement is anticipated to occur across the short dimension of the structure. The maximum total and differential movement is considered within tolerable limits for the proposed structure, provided that the structural design adequately considers this distortion.

7.6 New Pavement

The following recommendations for the new pavement are intended for vehicular traffic associated with the restaurant development within the subject property.

Pavement Subgrades

Following completion of the recommended subgrade preparation procedures, the subgrade in areas of new pavement construction are expected to consist of soil that exhibits a low expansion potential. The anticipated subgrade soils are classified as fair subgrade material with estimated R-value of 10 to 20 when properly prepared based on the Unified Soil Classification System designation of CL. An R-value of 10 has been assumed in the preparation of the pavement design. It should however, be recognized that the City of Milpitas may require a specific R-value test to verify the use of the following design. It is recommended that this testing, if required, be conducted following completion of rough grading in the proposed pavement areas so that the R-value test results are indicative of the actual pavement subgrade soils. Alternatively, a minimum code pavement section may be required if a specific R-value test is not performed. To use this R-value, all fill added to the pavement subgrade must have pavement support characteristics at least equivalent to the existing soils, and must be placed and compacted in accordance with the project specifications.

Asphalt Pavements

The following table presents recommended thicknesses for a new flexible pavement structure consisting of asphaltic concrete over a granular base, along with the appropriate CALTRANS specifications for proper materials and placement procedures. A pavement section has been provided for use in parking stall area due to the anticipated lower traffic intensity in this area.

ASPHALT PAVEMENTS

Materials	Thickness (inches)		CALTRANS Specifications
	Parking Stalls	Drive Lanes	
Asphaltic Concrete Surface Course (b)	1	1	Section 39, (a)
Asphaltic Concrete Binder Course (b)	2	2	Section 39, (a)
Crushed Aggregate Base Course	6	9	Section 26, Class 2 (R-value at least 78)

NOTES:
(a) Compaction to density between 95 and 100 percent of the 50-Blow Marshall Density
(b) The surface and binder course may be combined as a single layer placed in one lift if similar materials are utilized.

Pavement recommendations are based upon CALTRANS design parameters for a twenty-year design period and assume proper drainage and construction monitoring. It is, therefore, recommended that the geotechnical engineer monitors and tests subgrade preparation, and that the subgrade be evaluated immediately before pavement construction.

Portland Concrete Pavements

Portland Cement Concrete pavements are recommended in areas where traffic is concentrated such as the entrance/exit aprons as well as areas subjected to heavy loads such as the trash enclosure loading zone. The preparation of the subgrade soils within concrete pavement areas should be performed as previously described in this report. Portland Cement Concrete pavements in low and high stress areas are recommended to be at least 6 inches thick containing No. 3 bars at 18-inch on-center both ways placed at mid-height. The pavement should be constructed in accordance with Section 40 of the CALTRANS Standard Specifications. A minimum 4-inch thick layer of aggregate base course (CALTRANS Class 2) is recommended below the concrete pavement. This base course should be compacted to at least 95% of the material's maximum dry density.

The maximum joint spacing within new Portland Cement Concrete pavements is recommended to be 12 feet to control shrinkage cracking. Load transfer reinforcing is recommended at construction joints perpendicular to traffic flow if construction joints are not properly keyed. In

this event, ¾-inch diameter smooth dowel bars, 18 inches in length placed at 12 inches on-center are recommended where joints are perpendicular to the anticipated traffic flow. Expansion joints are recommended only where the pavement abuts fixed objects such as light standard foundations. Tie bars are recommended at the first joint within the perimeter of the concrete pavement area. Tie bars are recommended to be No. 4 bars at 42-inch on-center spacings and at least 48 inches in length.

General Considerations

Pavement recommendations assume proper drainage and construction monitoring and are based on traffic loads as indicated previously. Pavement designs are based on either PCA or CALTRANS design parameters for twenty (20) year design period. However, these designs are also based on a routine pavement maintenance program and significant asphalt concrete pavement rehabilitation after about 8 to 10 years, in order to obtain a reasonable pavement service life.

7.7 Recommended Construction Materials Testing Services

The report was prepared assuming that Giles will perform Construction Materials Testing (CMT) services during construction of the proposed development. In general, CMT services are recommended (and expected) to at least include observation and testing of foundation and pavement support soil and other construction materials. It might be necessary for Giles to provide supplemental geotechnical recommendations based on the results of CMT services and specific details of the project not known at this time.

7.8 Basis of Report

This report is based on Giles' proposal, which is dated March 27, 2019 and is referenced by Giles' proposal number 2GEP-1903026. The actual services for the project varied somewhat from those described in the proposal because of the conditions that were encountered while performing the services and in consideration of the proposed project.

This report is strictly based on the project description given earlier in this report. Giles must be notified if any parts of the project description or our assumptions are not accurate so that this report can be amended, if needed. This report is based on the assumption that the facility will be designed and constructed according to the codes that govern construction at the site.

The conclusions and recommendations in this report are based on estimated subsurface conditions as shown on the *Records of Subsurface Exploration*. Giles must be notified if the subsurface conditions that are encountered during construction of the proposed development differ from those shown on the *Records of Subsurface Exploration* because this report will likely need to be revised. General comments and limitations of this report are given in the appendix.

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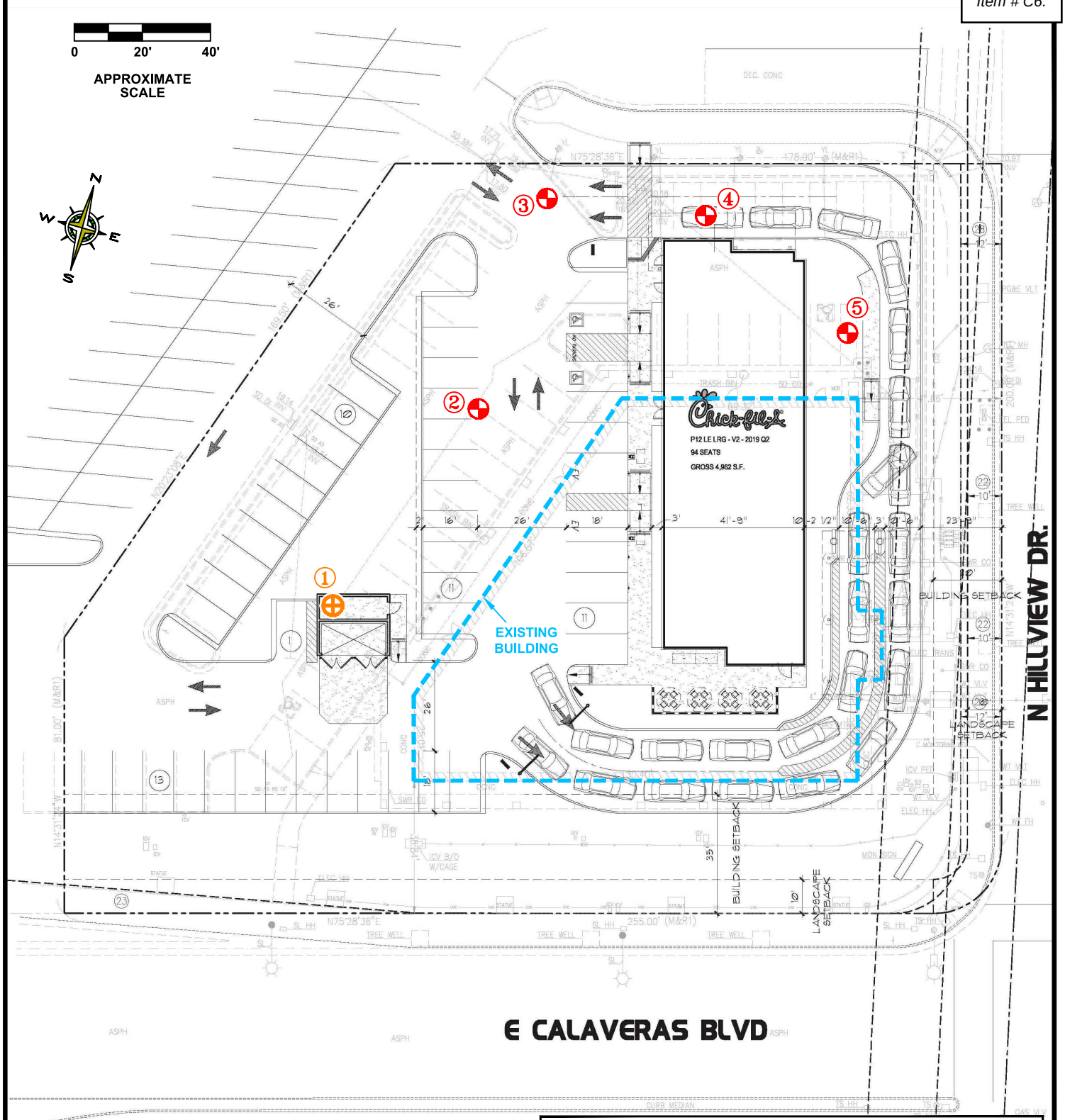
APPENDIX A

FIGURES AND TEST BORING LOGS

The Test Boring Location Plan contained herein was prepared based upon information supplied by *Giles'* client, or others, along with *Giles'* field measurements and observations. The diagram is presented for conceptual purposes only and is intended to assist the reader in report interpretation.

The Test Boring Logs and related information enclosed herein depict the subsurface (soil and water) conditions encountered at the specific boring locations on the date that the exploration was performed. Subsurface conditions may differ between boring locations and within areas of the site that were not explored with test borings. The subsurface conditions may also change at the boring locations over the passage of time.



LEGEND:

② GEOTECHNICAL TEST BORING

① GEOTECHNICAL TEST BORING / PERCOLATION TEST BORING

NOTES:

1.) TEST BORING LOCATIONS ARE APPROXIMATE.

2.) BASE MAP DEVELOPED FROM THE "PRELIMINARY SITE PLAN" (SHEET PSP-10), REV. 6-10-19, PREPARED BY CRHO ARCHITECTS.

GILES ENGINEERING ASSOCIATES, INC.
1965 N. MAIN STREET
ORANGE, CA 92865 (714)279-0817
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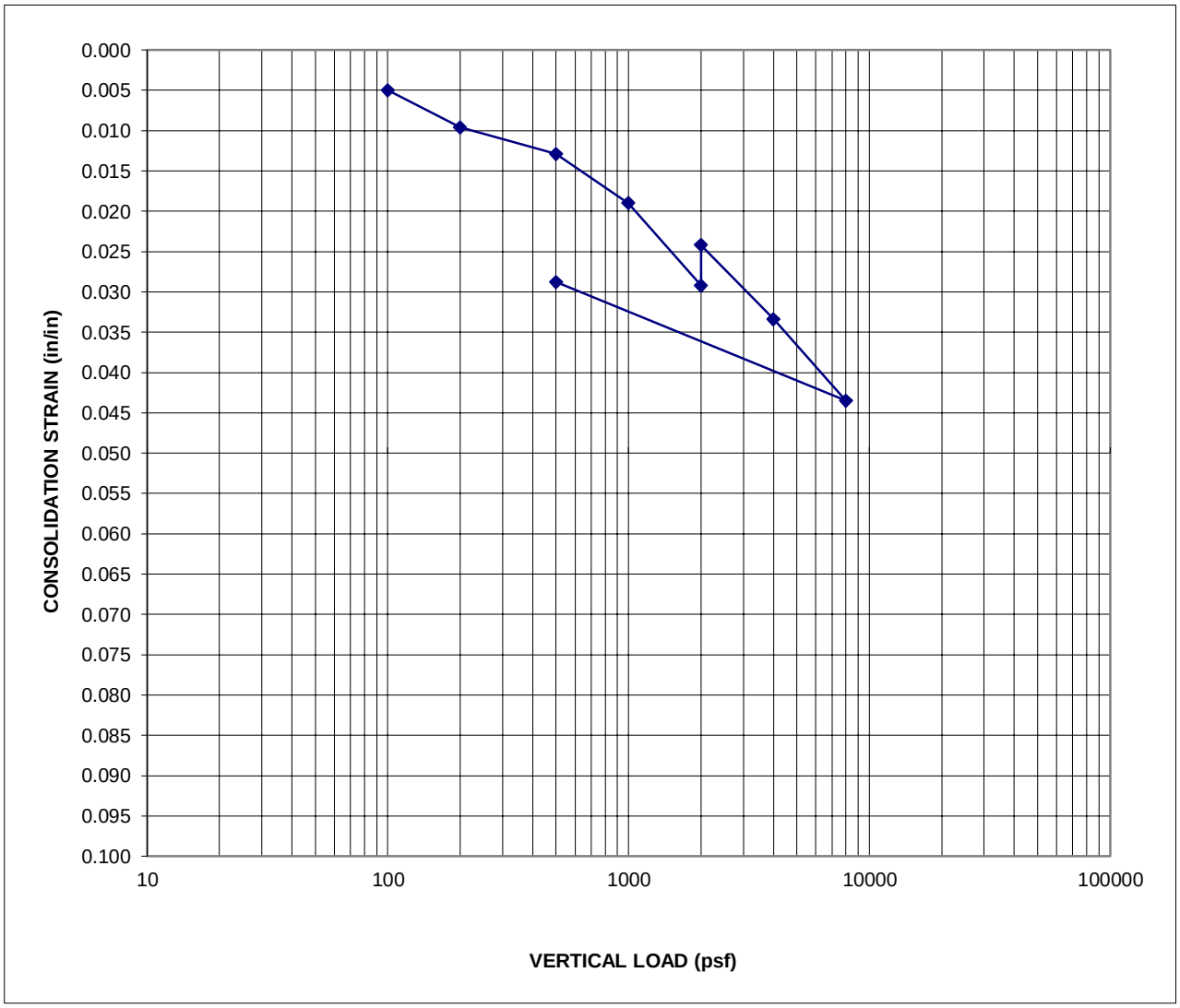
FIGURE 1
TEST BORING LOCATION PLAN
PROPOSED CHICK-FIL-A RESTAURANT NO. 04483
CALAVERAS AND HILLVIEW FSU
755 EAST CALAVERAS BOULEVARD
MILPITAS, CALIFORNIA

DESIGNED	DRAWN	SCALE	DATE	REVISED
MLS	JdeLid	approx. 1"=40'	06-21-19	–
PROJECT NO.: 2G-1904001			CAD No. 2g1904001-blp	

CONSOLIDATION / COLLAPSE TEST ASTM D2435/ASTM D5333



Classification	Silty Clay		
Boring No.	B-5		
Sample No.	2-CS	Initial Moisture Content (%)	19.0
Depth (ft.)	3.0 - 4.5	Final Moisture Content (%)	19.9
Elevation		Natural Density (pcf)	118.1
Liquid Limit		Initial Dry Density (pcf)	99.3
Plastic Limit		Final Dry Density (pcf)	104.8
Specimen Diameter (in.)	2.42	Swell at 2000 psf	0.5%
Initial Specimen Thickness (in.)	1.00		

Sample inundated at 2000 psf pressure

Project:	CFA #4483, Milpitas, CA
Client:	Chick-fil-A Inc.
Project No.:	2G-1904001
Figure No.:	2

GILES ENGINEERING ASSOCIATES, INC.

-GEOTECHNICAL, ENVIRONMENTAL, AND CONSTRUCTION MATERIALS-

1965 NORTH MAIN STREET, ORANGE, CALIFORNIA

OFFICE: 714-279-0817 FAX : 714-279-9687

BORING NO. & LOCATION: B-1	TEST BORING LOG	GILES ENGINEERING ASSOCIATES, INC.
SURFACE ELEVATION: 25 feet	PROPOSED CHICK-FIL-A RESTAURANT #4483	
COMPLETION DATE: 06/12/19	755 EAST CALAVERAS BOULEVARD MILPITAS, CA	
FIELD REP: MONICA SELL	PROJECT NO: 2G-1904001	

MATERIAL DESCRIPTION	Depth (ft)	Elevation	Sample No. & Type	N	Q_u (tsf)	Q_p (tsf)	Q_s (tsf)	W (%)	PID	NOTES
Approximately 7 inches of asphaltic concrete over 3 inches of aggregate base										
Dark Brown to Black Silty Clay, some Gravel - Moist (Possible Fill)			1-SS	16				22		
	2.5	22.5								
Dark Brown Silty Clay - Very Moist			2-SS	15				24		
	5.0	20.0								
Boring Terminated at about 5 feet (EL. 20')										

Water Observation Data	Remarks:
Water Encountered During Drilling: None	SS = Standard Penetration Test
Water Level At End of Drilling:	
Cave Depth At End of Drilling:	
Water Level After Drilling:	
Cave Depth After Drilling:	

Changes in strata indicated by the lines are approximate boundary between soil types. The actual transition may be gradual and may vary considerably between test borings. Location of test boring is shown on the Boring Location Plan.

BORING NO. & LOCATION: B-2	TEST BORING LOG	GILES ENGINEERING ASSOCIATES, INC.
SURFACE ELEVATION: 25 feet	PROPOSED CHICK-FIL-A RESTAURANT #4483	
COMPLETION DATE: 06/12/19	755 EAST CALAVERAS BOULEVARD MILPITAS, CA	
FIELD REP: MONICA SELL	PROJECT NO: 2G-1904001	

MATERIAL DESCRIPTION	Depth (ft)	Elevation	Sample No. & Type	N	Q_u (tsf)	Q_p (tsf)	Q_s (tsf)	W (%)	PID	NOTES
Approximately 7 inches of asphaltic concrete over 3 inches of aggregate base										
Dark Brown to Black Silty Clay, little Gravel - Damp (Possible Fill)			1-SS	14				23		
	2.5	22.5								
Dark Brown Silty Clay - Moist			2-SS	13				21		
	5.0	20.0								
Boring Terminated at about 5 feet (EL. 20')										

Water Observation Data	Remarks:
Water Encountered During Drilling: None	SS = Standard Penetration Test
Water Level At End of Drilling:	
Cave Depth At End of Drilling:	
Water Level After Drilling:	
Cave Depth After Drilling:	

Changes in strata indicated by the lines are approximate boundary between soil types. The actual transition may be gradual and may vary considerably between test borings. Location of test boring is shown on the Boring Location Plan.

BORING NO. & LOCATION: B-3	TEST BORING LOG	GILES ENGINEERING ASSOCIATES, INC.
SURFACE ELEVATION: 25 feet	PROPOSED CHICK-FIL-A RESTAURANT #4483	
COMPLETION DATE: 06/12/01	755 EAST CALAVERAS BOULEVARD MILPITAS, CA	
FIELD REP: MONICA SELL	PROJECT NO: 2G-1904001	

MATERIAL DESCRIPTION	Depth (ft)	Elevation	Sample No. & Type	N	Q_u (tsf)	Q_p (tsf)	Q_s (tsf)	W (%)	PID	NOTES
Approximately 6.5 inches of asphaltic concrete over 3 inches of aggregate base										
Light Gray Silty Clay - Damp			1-SS	36				17		
	2.5	22.5								
Light Gray Silty Clay - Damp			2-SS	21				17		
	5.0	20.0								
Boring Terminated at about 5 feet (EL. 20')										

Water Observation Data	Remarks:
Water Encountered During Drilling: None	SS = Standard Penetration Test
Water Level At End of Drilling:	
Cave Depth At End of Drilling:	
Water Level After Drilling:	
Cave Depth After Drilling:	

Changes in strata indicated by the lines are approximate boundary between soil types. The actual transition may be gradual and may vary considerably between test borings. Location of test boring is shown on the Boring Location Plan.

BORING NO. & LOCATION: B-4	TEST BORING LOG	GILES ENGINEERING ASSOCIATES, INC.
SURFACE ELEVATION: 25 feet	PROPOSED CHICK-FIL-A RESTAURANT #4483	
COMPLETION DATE: 06/12/19	755 EAST CALAVERAS BOULEVARD MILPITAS, CA	
FIELD REP: MONICA SELL	PROJECT NO: 2G-1904001	

MATERIAL DESCRIPTION	Depth (ft)	Elevation	Sample No. & Type	N	Q_u (tsf)	Q_p (tsf)	Q_s (tsf)	W (%)	PID	NOTES
Approximately 7 inches of asphaltic concrete over 3 inches of aggregate base			1-SS	20				18		EI=22 to 80 (low to medium) two bulk samples B4 & B5
Dark Brown Silty Clay - Moist			2-SS	15				25		
Light Gray Silty Clay - Damp		20	3-SS	20				18		
Light Brown Silty Clay - Very Moist	10		4-SS	7				19		LL=35 PL=15 PI=20
Light Brown Silty Clay - Wet		10	5-SS	9				23		LL=30 PL=15 PI=16
	20		6-SS	18				18		
		0	7-SS	21				19		LL=27 PL=11 PI=16
Light Brown fine Clayey Sand - Wet	30		8-SS	13				21		LL=35 PL=16.0 PI=19
Light Brown Silty Clay - Wet		-10	9-SS	24				18		LL=44 PL=15 PI=29
	40		10-SS	23				18		

Terminated at 41.5 feet due to refusal
Boring Terminated at about 41.5 feet (EL. -16.5')

Water Observation Data	Remarks:
Water Encountered During Drilling: 11 ft.	SS = Standard Penetration Test
Water Level At End of Drilling:	
Cave Depth At End of Drilling:	
Water Level After Drilling:	
Cave Depth After Drilling:	

Changes in strata indicated by the lines are approximate boundary between soil types. The actual transition may be gradual and may vary considerably between test borings. Location of test boring is shown on the Boring Location Plan.

BORING NO. & LOCATION: B-5	TEST BORING LOG	GILES ENGINEERING ASSOCIATES, INC.
SURFACE ELEVATION: 25 feet	PROPOSED CHICK-FIL-A RESTAURANT #4483	
COMPLETION DATE: 06/12/19	755 EAST CALAVERAS BOULEVARD MILPITAS, CA	
FIELD REP: MONICA SELL	PROJECT NO: 2G-1904001	

MATERIAL DESCRIPTION	Depth (ft)	Elevation	Sample No. & Type	N	Q_u (tsf)	Q_p (tsf)	Q_s (tsf)	W (%)	PID	NOTES
Approximately 7 inches of asphaltic concrete over 3 inches of aggregate base										
Dark Brown to Black Silty Clay - Moist			1-SS	14				23		
Dark Brown Silty Clay and Light Brown fine to medium Clayey Sand - Moist			2-CS	25				25		Dd=96.3 pcf
	5	20								
Dark Brown Silty Clay - Very Moist			3-CS	34				21		Dd=88.5 pcf
	10	15								
Light Brown Silty Clay - Very Moist			4-CS	15						
	15	10								
Light Brown Silty Clay - Wet			5-SS	16				18		
Boring Terminated at about 16.5 feet (EL. 8.5')										

Water Observation Data	Remarks:
Water Encountered During Drilling: 11 ft.	CS = California Split Spoon
Water Level At End of Drilling:	SS = Standard Penetration Test
Cave Depth At End of Drilling:	
Water Level After Drilling:	
Cave Depth After Drilling:	

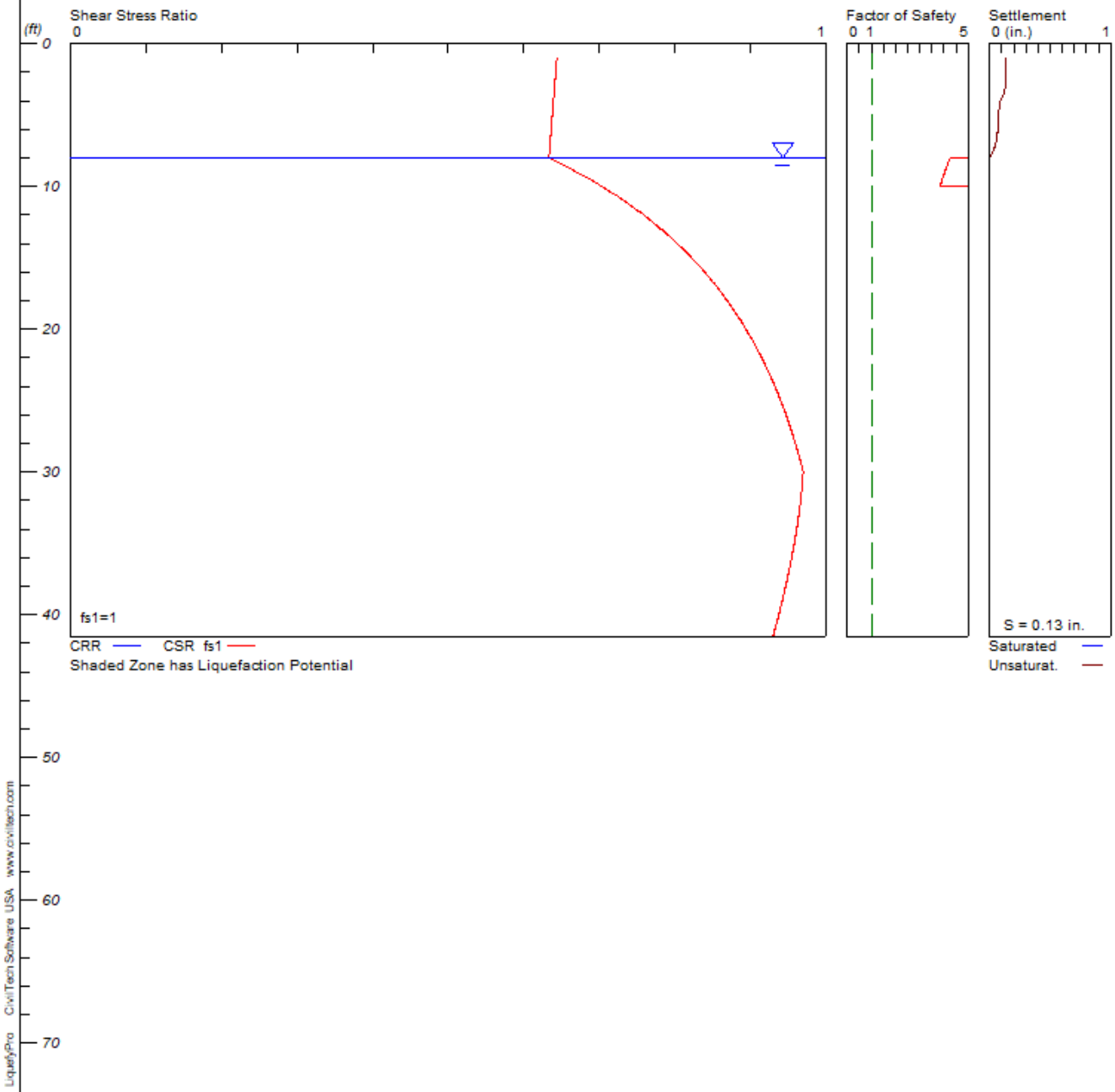
Changes in strata indicated by the lines are approximate boundary between soil types. The actual transition may be gradual and may vary considerably between test borings. Location of test boring is shown on the Boring Location Plan.

LIQUEFACTION ANALYSIS

CFA Milpitas

Hole No.=B-4 Water Depth=8 ft

Magnitude=6.67
Acceleration=0.993g



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*******************************************************************************
********************
                                          LIQUEFACTION ANALYSIS SUMMARY

                                         Copyright by CivilTech Software
                                            www.civiltechsoftware.com


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        Font: Courier New, Regular, Size 8 is recommended for this report.
        Licensed to ,   9/4/2020        2:56:53 PM

        Input File Name: C:\Users\Monica Sell\Desktop\2G-1904001 CFA Milpitas
Update\B-4 Milpitas.liq
        Title:  CFA Milpitas
        Subtitle:  2G-1904001

        Surface Elev.=
        Hole No.=B-4
        Depth of Hole= 41.50 ft
        Water Table during Earthquake= 8.00 ft
        Water Table during In-Situ Testing= 11.00 ft
        Max. Acceleration= 0.99 g
        Earthquake Magnitude= 6.67

 Input Data:
        Surface Elev.=
        Hole No.=B-4
        Depth of Hole=41.50 ft
        Water Table during Earthquake= 8.00 ft
        Water Table during In-Situ Testing= 11.00 ft
        Max. Acceleration=0.99 g
        Earthquake Magnitude=6.67
        No-Liquefiable Soils:   CL, OL are Non-Liq. Soil

        1. SPT or BPT Calculation.
        2. Settlement Analysis Method: Tokimatsu/Seed
        3. Fines Correction for Liquefaction: Idriss/Seed
        4. Fine Correction for Settlement: During Liquefaction*
        5. Settlement Calculation in: All zones*
        6. Hammer Energy Ratio,                                    Ce = 1.25
        7. Borehole Diameter,                                          Cb= 1
        8. Sampling Method,                                           Cs= 1.2
        9. User request factor of safety (apply to CSR) ,   User= 1
           Plot one CSR curve (fs1=1)
        10. Use Curve Smoothing: No
        * Recommended Options
```

In-Situ Test Data:

Depth ft	SPT	gamma pcf	Fines %
1.00	21.00	120.00	80.00
3.00	15.00	120.00	80.00
5.00	20.00	120.00	80.00
10.00	7.00	120.00	NoLiq
15.00	9.00	120.00	NoLiq
20.00	18.00	120.00	NoLiq
25.00	21.00	120.00	NoLiq
30.00	13.00	120.00	NoLiq
35.00	24.00	120.00	NoLiq
40.00	23.00	120.00	NoLiq

Output Results:

Settlement of Saturated Sands=0.00 in.
Settlement of Unsaturated Sands=0.13 in.
Total Settlement of Saturated and Unsaturated Sands=0.13 in.
Differential Settlement=0.066 to 0.088 in.

Depth ft	CRRm	CSRfs	F.S.	S_sat. in.	S_dry in.	S_all in.
1.00	2.70	0.64	5.00	0.00	0.13	0.13
1.50	2.70	0.64	5.00	0.00	0.13	0.13
2.00	2.70	0.64	5.00	0.00	0.13	0.13
2.50	2.70	0.64	5.00	0.00	0.13	0.13
3.00	2.70	0.64	5.00	0.00	0.13	0.13
3.50	2.70	0.64	5.00	0.00	0.12	0.12
4.00	2.70	0.64	5.00	0.00	0.09	0.09
4.50	2.70	0.64	5.00	0.00	0.08	0.08
5.00	2.70	0.64	5.00	0.00	0.07	0.07
5.50	2.70	0.64	5.00	0.00	0.07	0.07
6.00	2.70	0.64	5.00	0.00	0.07	0.07
6.50	2.70	0.64	5.00	0.00	0.06	0.06
7.00	2.70	0.63	5.00	0.00	0.05	0.05
7.50	2.70	0.63	5.00	0.00	0.03	0.03
8.00	2.70	0.63	4.26	0.00	0.00	0.00
8.50	2.70	0.65	4.14	0.00	0.00	0.00
9.00	2.70	0.67	4.03	0.00	0.00	0.00
9.50	2.70	0.69	3.93	0.00	0.00	0.00
10.00	2.00	0.70	5.00	0.00	0.00	0.00
10.50	2.00	0.72	5.00	0.00	0.00	0.00
11.00	2.00	0.73	5.00	0.00	0.00	0.00
11.50	2.00	0.75	5.00	0.00	0.00	0.00
12.00	2.00	0.76	5.00	0.00	0.00	0.00
12.50	2.00	0.77	5.00	0.00	0.00	0.00
13.00	2.00	0.78	5.00	0.00	0.00	0.00

13.50	2.00	0.79	5.00	0.00	0.00	0.00
14.00	2.00	0.80	5.00	0.00	0.00	0.00
14.50	2.00	0.81	5.00	0.00	0.00	0.00
15.00	2.00	0.82	5.00	0.00	0.00	0.00
15.50	2.00	0.83	5.00	0.00	0.00	0.00
16.00	2.00	0.84	5.00	0.00	0.00	0.00
16.50	2.00	0.85	5.00	0.00	0.00	0.00
17.00	2.00	0.86	5.00	0.00	0.00	0.00
17.50	2.00	0.86	5.00	0.00	0.00	0.00
18.00	2.00	0.87	5.00	0.00	0.00	0.00
18.50	2.00	0.88	5.00	0.00	0.00	0.00
19.00	2.00	0.88	5.00	0.00	0.00	0.00
19.50	2.00	0.89	5.00	0.00	0.00	0.00
20.00	2.00	0.89	5.00	0.00	0.00	0.00
20.50	2.00	0.90	5.00	0.00	0.00	0.00
21.00	2.00	0.91	5.00	0.00	0.00	0.00
21.50	2.00	0.91	5.00	0.00	0.00	0.00
22.00	2.00	0.92	5.00	0.00	0.00	0.00
22.50	2.00	0.92	5.00	0.00	0.00	0.00
23.00	2.00	0.92	5.00	0.00	0.00	0.00
23.50	2.00	0.93	5.00	0.00	0.00	0.00
24.00	2.00	0.93	5.00	0.00	0.00	0.00
24.50	2.00	0.94	5.00	0.00	0.00	0.00
25.00	2.00	0.94	5.00	0.00	0.00	0.00
25.50	2.00	0.94	5.00	0.00	0.00	0.00
26.00	2.00	0.95	5.00	0.00	0.00	0.00
26.50	2.00	0.95	5.00	0.00	0.00	0.00
27.00	2.00	0.95	5.00	0.00	0.00	0.00
27.50	2.00	0.96	5.00	0.00	0.00	0.00
28.00	2.00	0.96	5.00	0.00	0.00	0.00
28.50	2.00	0.96	5.00	0.00	0.00	0.00
29.00	2.00	0.97	5.00	0.00	0.00	0.00
29.50	2.00	0.97	5.00	0.00	0.00	0.00
30.00	2.00	0.97	5.00	0.00	0.00	0.00
30.50	2.00	0.97	5.00	0.00	0.00	0.00
31.00	2.00	0.97	5.00	0.00	0.00	0.00
31.50	2.00	0.97	5.00	0.00	0.00	0.00
32.00	2.00	0.97	5.00	0.00	0.00	0.00
32.50	2.00	0.97	5.00	0.00	0.00	0.00
33.00	2.00	0.96	5.00	0.00	0.00	0.00
33.50	2.00	0.96	5.00	0.00	0.00	0.00
34.00	2.00	0.96	5.00	0.00	0.00	0.00
34.50	2.00	0.96	5.00	0.00	0.00	0.00
35.00	2.00	0.96	5.00	0.00	0.00	0.00
35.50	2.00	0.96	5.00	0.00	0.00	0.00
36.00	2.00	0.95	5.00	0.00	0.00	0.00
36.50	2.00	0.95	5.00	0.00	0.00	0.00
37.00	2.00	0.95	5.00	0.00	0.00	0.00
37.50	2.00	0.95	5.00	0.00	0.00	0.00
38.00	2.00	0.95	5.00	0.00	0.00	0.00

38.50	2.00	0.94	5.00	0.00	0.00	0.00
39.00	2.00	0.94	5.00	0.00	0.00	0.00
39.50	2.00	0.94	5.00	0.00	0.00	0.00
40.00	2.00	0.94	5.00	0.00	0.00	0.00
40.50	2.00	0.94	5.00	0.00	0.00	0.00
41.00	2.00	0.93	5.00	0.00	0.00	0.00
41.50	2.00	0.93	5.00	0.00	0.00	0.00

* F.S.<1, Liquefaction Potential Zone
(F.S. is limited to 5, CRR is limited to 2, CSR is limited to 2)

Units: Unit: qc, fs, Stress or Pressure = atm (1.0581tsf); Unit Weight = pcf; Depth = ft; Settlement = in.

---

1 atm (atmosphere) = 1 tsf (ton/ft2)

CRRm	Cyclic resistance ratio from soils
CSRsf	Cyclic stress ratio induced by a given earthquake (with user request factor of safety)
F.S.	Factor of Safety against liquefaction, F.S.=CRRm/CSRsf
S_sat	Settlement from saturated sands
S_dry	Settlement from Unsaturated Sands
S_all	Total Settlement from Saturated and Unsaturated Sands
NoLiq	No-Liquefy Soils

APPENDIX B

FIELD PROCEDURES

The field operations were conducted in general accordance with the procedures recommended by the American Society for Testing and Materials (ASTM) designation D

420 entitled “Standard Guide for Sampling Rock and Rock” and/or other relevant specifications. Soil samples were preserved and transported to *Giles’* laboratory in general accordance with the procedures recommended by ASTM designation D 4220 entitled “Standard Practice for Preserving and Transporting Soil Samples.” Brief descriptions of the sampling, testing and field procedures commonly performed by *Giles* are provided herein.

GENERAL FIELD PROCEDURES

Test Boring Elevations

The ground surface elevations reported on the Test Boring Logs are referenced to the assumed benchmark shown on the Boring Location Plan (Figure 1). Unless otherwise noted, the elevations were determined with a conventional hand-level and are accurate to within about 1 foot.

Test Boring Locations

The test borings were located on-site based on the existing site features and/or apparent property lines. Dimensions illustrating the approximate boring locations are reported on the Boring Location Plan (Figure 1).

Water Level Measurement

The water levels reported on the Test Boring Logs represent the depth of “free” water encountered during drilling and/or after the drilling tools were removed from the borehole. Water levels measured within a granular (sand and gravel) soil profile are typically indicative of the water table elevation. It is usually not possible to accurately identify the water table elevation with cohesive (clayey) soils, since the rate of seepage is slow. The water table elevation within cohesive soils must therefore be determined over a period of time with groundwater observation wells.

It must be recognized that the water table may fluctuate seasonally and during periods of heavy precipitation. Depending on the subsurface conditions, water may also become perched above the water table, especially during wet periods.

Borehole Backfilling Procedures

Each borehole was backfilled upon completion of the field operations. If potential contamination was encountered, and/or if required by state or local regulations, boreholes were backfilled with an “impervious” material (such as bentonite slurry). Borings that penetrated pavements, sidewalks, etc. were “capped” with Portland Cement concrete, asphaltic concrete, or a similar surface material. It must, however, be recognized that the backfill material may settle, and the surface cap may subside, over a period of time. Further backfilling and/or re-surfacing by *Giles’* client or the property owner may be required.

FIELD SAMPLING AND TESTING PROCEDURES

Auger Sampling (AU)

Soil samples are removed from the auger flights as an auger is withdrawn above the ground surface. Such samples are used to determine general soil types and identify approximate soil stratifications. Auger samples are highly disturbed and are therefore not typically used for geotechnical strength testing.

Split-Barrel Sampling (SS) – (ASTM D-1586)

A split-barrel sampler with a 2-inch outside diameter is driven into the subsoil with a 140-pound hammer free-falling a vertical distance of 30 inches. The summation of hammer-blows required to drive the sampler the final 12-inches of an 18-inch sample interval is defined as the “Standard Penetration Resistance” or N-value is an index of the relative density of granular soils and the comparative consistency of cohesive soils. A soil sample is collected from each SPT interval.

Shelby Tube Sampling (ST) – (ASTM D-1587)

A relatively undisturbed soil sample is collected by hydraulically advancing a thin-walled Shelby Tube sampler into a soil mass. Shelby Tubes have a sharp cutting edge and are commonly 2 to 5 inches in diameter.

Bulk Sample (BS)

A relatively large volume of soils is collected with a shovel or other manually-operated tool. The sample is typically transported to *Giles’* materials laboratory in a sealed bag or bucket.

Dynamic Cone Penetration Test (DC) – (ASTM STP 399)

This test is conducted by driving a 1.5-inch-diameter cone into the subsoil using a 15-pound steel ring (hammer), free-falling a vertical distance of 20 inches. The number of hammer-blows required to drive the cone 1¾ inches is an indication of the soil strength and density, and is defined as “N”. The Dynamic Cone Penetration test is commonly conducted in hand auger borings, test pits and within excavated trenches.

- Continued -

Ring-Lined Barrel Sampling – (ASTM D 3550)

In this procedure, a ring-lined barrel sampler is used to collect soil samples for classification and laboratory testing. This method provides samples that fit directly into laboratory test instruments without additional handling/disturbance.

Sampling and Testing Procedures

The field testing and sampling operations were conducted in general accordance with the procedures recommended by the American Society for Testing and Materials (ASTM) and/or other relevant specifications. Results of the field testing (i.e. N-values) are reported on the Test Boring Logs. Explanations of the terms and symbols shown on the logs are provided on the appendix enclosure entitled “General Notes”.

APPENDIX C

LABORATORY TESTING AND CLASSIFICATION

The laboratory testing was conducted under the supervision of a geotechnical engineer in accordance with the procedures recommended by the American Society for Testing and Materials (ASTM) and/or other relevant specifications. Brief descriptions of laboratory tests commonly performed by *Giles* are provided herein.

LABORATORY TESTING AND CLASSIFICATION

Photoionization Detector (PID)

In this procedure, soil samples are “scanned” in *Giles’* analytical laboratory using a Photoionization Detector (PID). The instrument is equipped with an 11.7 eV lamp calibrated to a Benzene Standard and is capable of detecting a minute concentration of **certain** Volatile Organic Compound (VOC) vapors, such as those commonly associated with petroleum products and some solvents. Results of the PID analysis are expressed in HNu (manufacturer’s) units rather than actual concentration.

Moisture Content (w) (ASTM D 2216)

Moisture content is defined as the ratio of the weight of water contained within a soil sample to the weight of the dry solids within the sample. Moisture content is expressed as a percentage.

Unconfined Compressive Strength (qu) (ASTM D 2166)

An axial load is applied at a uniform rate to a cylindrical soil sample. The unconfined compressive strength is the maximum stress obtained or the stress when 15% axial strain is reached, whichever occurs first.

Calibrated Penetrometer Resistance (qp)

The small, cylindrical tip of a hand-held penetrometer is pressed into a soil sample to a prescribed depth to measure the soils capacity to resist penetration. This test is used to evaluate unconfined compressive strength.

Vane-Shear Strength (qs)

The blades of a vane are inserted into the flat surface of a soil sample and the vane is rotated until failure occurs. The maximum shear resistance measured immediately prior to failure is taken as the vane-shear strength.

Loss-on-Ignition (ASTM D 2974; Method C)

The Loss-on-Ignition (L.O.I.) test is used to determine the organic content of a soil sample. The procedure is conducted by heating a dry soil sample to 440°C in order to burn-off or “ash” organic matter present within the sample. The L.O.I. value is the ratio of the weight loss due to ignition compared to the initial weight of the dry sample. L.O.I. is expressed as a percentage.

Particle Size Distribution (ASTB D 421, D 422, and D 1140)

This test is performed to determine the distribution of specific particle sizes (diameters) within a soil sample. The distribution of coarse-grained soil particles (sand and gravel) is determined from a “sieve analysis,” which is conducted by passing the sample through a series of nested sieves. The distribution of fine-grained soil particles (silt and clay) is determined from a “hydrometer analysis” which is based on the sedimentation of particles suspended in water.

Consolidation Test (ASTM D 2435)

In this procedure, a series of cumulative vertical loads are applied to a small, laterally confined soil sample. During each load increment, vertical compression (consolidation) of the sample is measured over a period of time. Results of this test are used to estimate settlement and time rate of settlement.

Classification of Samples

Each soil sample was visually-manually classified, based on texture and plasticity, in general accordance with the Unified Soil Classification System (ASTM D-2488-75). The classifications are reported on the Test Boring Logs.

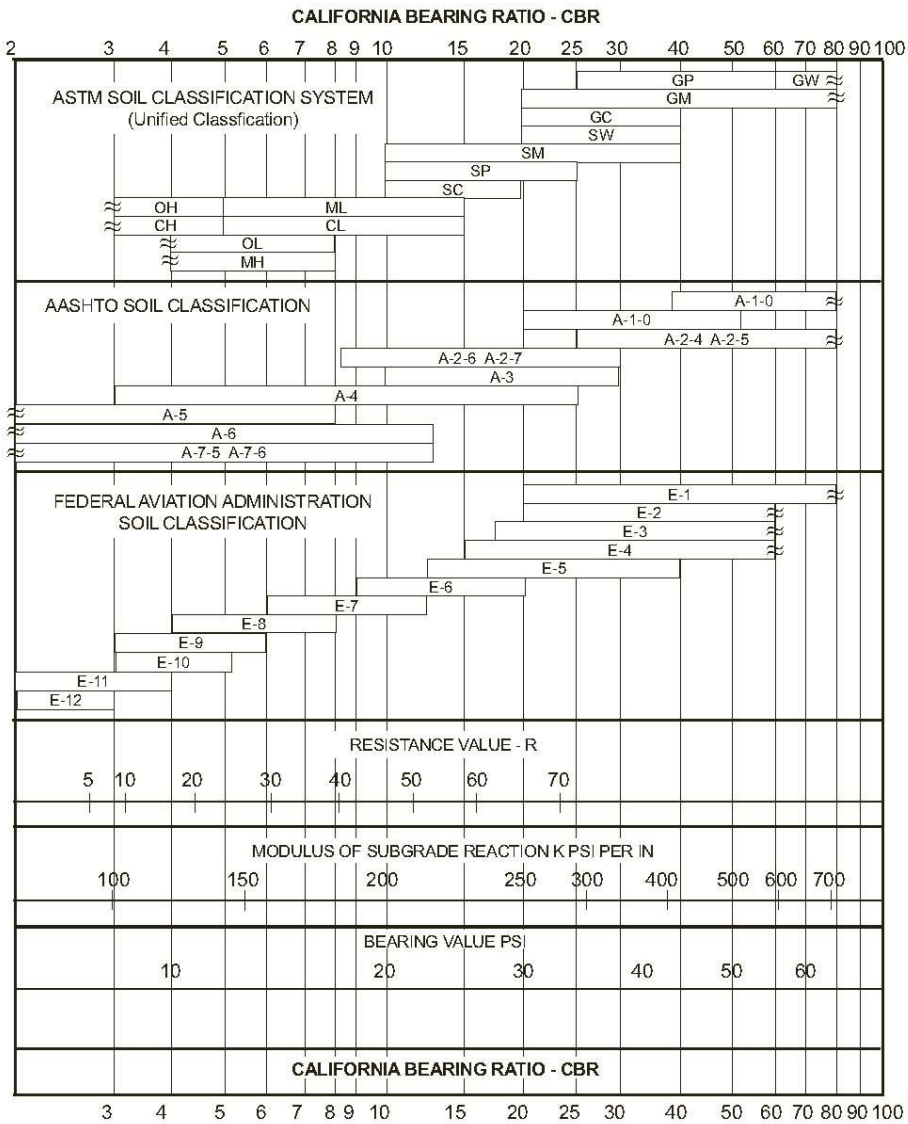
Laboratory Testing

The laboratory testing operations were conducted in general accordance with the procedures recommended by the American Society for Testing and Materials (ASTM) and/or other relevant specifications. Results of the laboratory tests are provided on the Test Boring Logs or other appendix enclosures. Explanation of the terms and symbols used on the logs is provided on the appendix enclosure entitled “General Notes.”

California Bearing Ratio (CBR) Test ASTM D-1833

The CBR test is used for evaluation of a soil subgrade for pavement design. The test consists of measuring the force required for a 3-square-inch cylindrical piston to penetrate 0.1 or 0.2 inch into a compacted soil sample. The result is expressed as a percent of force required to penetrate a standard compacted crushed stone.

Unless a CBR test has been specifically requested by the client, the CBR is estimated from published charts, based on soil classification and strength characteristics. A typical correlation chart is below.



APPENDIX D

GENERAL INFORMATION

GUIDE SPECIFICATIONS FOR SUBGRADE AND PREPARATION FOR FILL, FOUNDATION, FLOOR SLAB AND PAVEMENT SUPPORT; AND SELECTION, PLACEMENT AND COMPACTION OF FILL SOILS USING MODIFIED PROCTOR PROCEDURES

1. Construction monitoring and testing of subgrades and grades for fill, foundation, floor slab and pavement; and fill selection, placement and compaction shall be performed by an experienced soils engineer and/or his representatives.

2. All compacted fill, subgrades, and grades shall be (a) underlain by suitable bearing material, (b) free of all organic frozen, or other deleterious material, and (c) observed, tested and approved by qualified engineering personnel representing an experienced soils engineer. Preparation of subgrades after stripping vegetation, organic or other unsuitable materials shall consist of (a) proofrolling to detect soft, wet, yielding soils or other unstable materials that must be undercut, (b) scarifying top 6 to 8 inches, (c) moisture conditioning the soils as required, and (d) recompaction to same minimum in-situ density required for similar material indicated under Item 5. Note: Compaction requirements for pavement subgrade are higher than other areas. Weather and construction equipment may damage compacted fill surface and reworking and retesting may be necessary for proper performance.

3. In overexcavation and fill areas, the compacted fill must extend (a) a minimum 1 foot lateral distance beyond the exterior edge of the foundation at bearing grade or pavement at subgrade and down to compacted fill subgrade on a maximum 0.5(H):1(v) slope, (b) 1 foot above footing grade outside the building, and (c) to floor subgrade inside the building. Fill shall be placed and compacted on a 5(H):1(V) slope or must be stepped or benched as required to flatten if not specifically approved by qualified personnel under the direction of an experienced soils engineer.

4. The compacted fill materials shall be free of deleterious, organic, or frozen matter, shall contain no chemicals that may result in the material being classified as "contaminated", and shall be low-expansive with a maximum Liquid Limit (ASTM D-423) and Plasticity Index (ASTM D-424) of 30 and 15, respectively, unless specifically tested and found to have low expansive properties and approved by an experienced soils engineer. The top 12 inches of compacted fill should have a maximum 3 inch particle diameter and all underlying compacted fill a maximum 6 inch diameter unless specifically approved by an experienced soils engineer. All fill material must be tested and approved under the direction of an experienced soils engineer prior to placement. If the fill is to provide non-frost susceptible characteristics, it must be classified as a clean GW, GP, SW or SP per Unified Soils Classification System (ASTM D-2487).

5. For structural fill depths less than 20 feet, the density of the structural compacted fill and scarified subgrade and grades shall not be less than 90 percent of the maximum dry density as determined by Modified Proctor (ASTM D-1557) with the exception of the top 12 inches of pavement subgrade which shall have a minimum in-situ density of 95 percent of maximum dry density, or 5 percent higher than underlying structural fill materials. Where the structural fill depth is greater than 20 feet, the portion below 20 feet should have a minimum in-place density of 95 percent of its maximum dry density or 5 percent higher than the top 20 feet. Cohesive soils shall not vary by more than -1 to +3 percent moisture content and granular soil ±3 percent from the optimum when placed and compacted or recompacted, unless specifically recommended/approved by the soils engineer observing the placement and compaction. Cohesive soils with moderate to high expansion potentials (PI>15) should, however, be placed, compacted and maintained prior to construction at a 3±1 percent moisture content above optimum moisture content to limit future heave. Fill shall be placed in layers with a maximum loose thickness of 8 inches for foundations and 10 inches for floor slabs and pavements, unless specifically approved by the soils engineer taking into consideration the type of materials and compaction equipment being used. The compaction equipment should consist of suitable mechanical equipment specifically designed for soil compaction. Bulldozers or similar tracked vehicles are typically not suitable for compaction.

6. Excavation, filing, subgrade grade preparation shall be performed in a manner and sequence that will provide drainage at all times and proper control of erosion. Precipitation, springs, and seepage water encountered shall be pumped or drained to provide a suitable working platform. Springs or water seepage encountered during grade/foundation construction must be called to the soils engineer's attention immediately for possible construction procedure revision or inclusion of an underdrain system.

7. Non-structural fill adjacent to structural fill should typically be placed in unison to provide lateral support. Backfill along walls must be placed and compacted with care to ensure excessive unbalanced lateral pressures do not develop. The type of fill material placed adjacent to below grade walls (i.e. basement walls and retaining walls) must be properly tested and approved by an experienced soils engineer with consideration for the lateral pressure used in the wall design.

8. Wherever, in the opinion of the soils engineer or the Owner's Representatives, an unstable condition is being created either by cutting or filling, the work should not proceed into that area until an appropriate geotechnical exploration and analysis has been performed and the grading plan revised, if found necessary.

GENERAL COMMENTS

The soil samples obtained during the subsurface exploration will be retained for a period of thirty days. If no instructions are received, they will be disposed of at that time.

This report has been prepared exclusively for the client in order to aid in the evaluation of this property and to assist the architects and engineers in the design and preparation of the project plans and specifications. Copies of this report may be provided to contractor(s), with contract documents, to disclose information relative to this project. The report, however, has not been prepared to serve as the plans and specifications for actual construction without the appropriate interpretation by the project architect, structural engineer, and/or civil engineer. Reproduction and distribution of this report must be authorized by the client and *Giles*.

This report has been based on assumed conditions/characteristics of the proposed development where specific information was not available. It is recommended that the architect, civil engineer and structural engineer along with any other design professionals involved in this project carefully review these assumptions to ensure they are consistent with the actual planned development. When discrepancies exist, they should be brought to our attention to ensure they do not affect the conclusions and recommendations provided herein. The project plans and specifications may also be submitted to *Giles* for review to ensure that the geotechnical related conclusions and recommendations provided herein have been correctly interpreted.

The analysis of this site was based on a subsoil profile interpolated from a limited subsurface exploration. If the actual conditions encountered during construction vary from those indicated by the borings, *Giles* must be contacted immediately to determine if the conditions alter the recommendations contained herein.

The conclusions and recommendations presented in this report have been promulgated in accordance with generally accepted professional engineering practices in the field of geotechnical engineering. No other warranty is either expressed or implied.

CHARACTERISTICS AND RATINGS OF UNIFIED SOIL SYSTEM CLASSES FOR SOIL CONSTRUCTION *

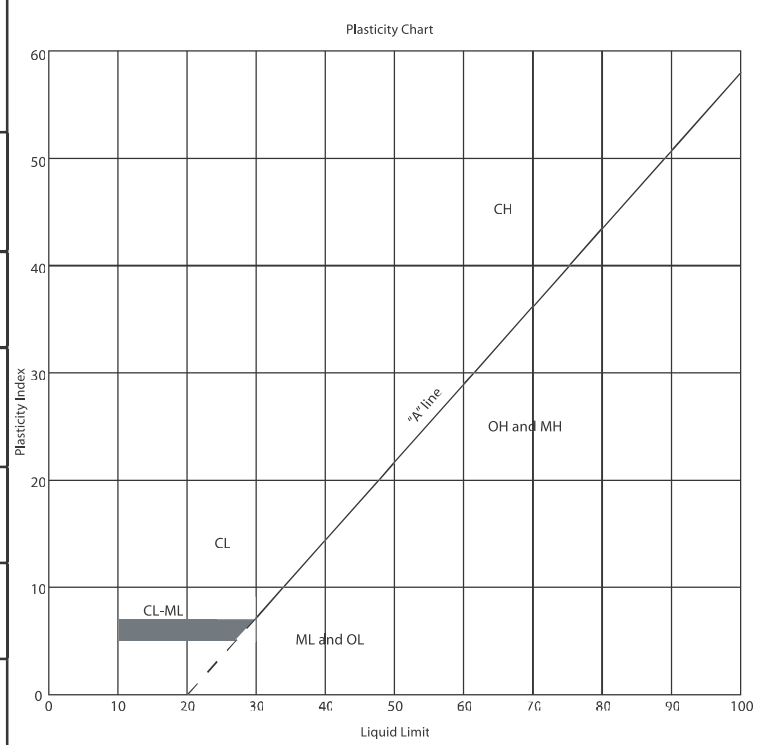
Class	Compaction Characteristics	Max. Dry Density Standard Proctor (pcf)	Compressibility and Expansion	Drainage and Permeability	Value as an Embankment Material	Value as Subgrade When Not Subject to Frost	Value as Base Course	Value as Temporary Pavement	
								With Dust Palliative	With Bituminous Treatment
GW	Good: tractor, rubber-tired, steel wheel or vibratory roller	125-135	Almost none	Good drainage, pervious	Very stable	Excellent	Good	Fair to poor	Excellent
GP	Good: tractor, rubber-tired, steel wheel or vibratory roller	115-125	Almost none	Good drainage, pervious	Reasonably stable	Excellent to good	Poor to fair	Poor	
GM	Good: rubber-tired or light sheepsfoot roller	120-135	Slight	Poor drainage, semipervious	Reasonably stable	Excellent to good	Fair to poor	Poor	Poor to fair
GC	Good to fair: rubber-tired or sheepsfoot roller	115-130	Slight	Poor drainage, impervious	Reasonably stable	Good	Good to fair **	Excellent	Excellent
SW	Good: tractor, rubber-tired or vibratory roller	110-130	Almost none	Good drainage, pervious	Very stable	Good	Fair to poor	Fair to poor	Good
SP	Good: tractor, rubber-tired or vibratory roller	100-120	Almost none	Good drainage, pervious	Reasonably stable when dense	Good to fair	Poor	Poor	Poor to fair
SM	Good: rubber-tired or sheepsfoot roller	110-125	Slight	Poor drainage, impervious	Reasonably stable when dense	Good to fair	Poor	Poor	Poor to fair
SC	Good to fair: rubber-tired or sheepsfoot roller	105-125	Slight to medium	Poor drainage, impervious	Reasonably stable	Good to fair	Fair to poor	Excellent	Excellent
ML	Good to poor: rubber-tired or sheepsfoot roller	95-120	Slight to medium	Poor drainage, impervious	Poor stability, high density required	Fair to poor	Not suitable	Poor	Poor
CL	Good to fair: sheepsfoot or rubber-tired roller	95-120	Medium	No drainage, impervious	Good stability	Fair to poor	Not suitable	Poor	Poor
OL	Fair to poor: sheepsfoot or rubber-tired roller	80-100	Medium to high	Poor drainage, impervious	Unstable, should not be used	Poor	Not suitable	Not suitable	Not suitable
MH	Fair to poor: sheepsfoot or rubber-tired roller	70-95	High	Poor drainage, impervious	Poor stability, should not be used	Poor	Not suitable	Very poor	Not suitable
CH	Fair to poor: sheepsfoot roller	80-105	Very high	No drainage, impervious	Fair stability, may soften on expansion	Poor to very poor	Not suitable	Very poor	Not suitable
OH	Fair to poor: sheepsfoot roller	65-100	High	No drainage, impervious	Unstable, should not be used	Very poor	Not suitable	Not suitable	Not suitable
Pt	Not suitable		Very high	Fair to poor drainage	Should not be used	Not suitable	Not suitable	Not suitable	Not suitable

* "The Unified Classification: Appendix A - Characteristics of Soil, Groups Pertaining to Roads and Airfields, and Appendix B - Characteristics of Soil Groups Pertaining to Embankments and Foundations," Technical Memorandum 357, U.S. Waterways Experiment Station, Vicksburg, 1953.

** Not suitable if subject to frost.

UNIFIED SOIL CLASSIFICATION SYSTEM (ASTM D-2487)

Major Divisions			Group Symbols	Typical Names	Laboratory Classification Criteria		
Coarse-grained soils (more than half of material is larger than No. 200 sieve size)	Gravels (More than half of coarse fraction is larger than No. 4 sieve size)	Clean gravels (little or no fines)	GW	Well-graded gravels, gravel-sand mixtures, little or no fines	Determine percentages of sand and gravel from grain-size curve. Depending on percentage of fines (fraction smaller than No. 200 sieve size), coarse-grained soils are classified as follows: Less than 5 percent: GW, GP, SW, SP; More than 12 percent: GM, GC, SM, SC; 5 to 12 percent: *Borderline* cases requiring dual symbols[b]	$C_u = \frac{D_{60}}{D_{10}}$ greater than 4; $C_c = \frac{(D_{30})^2}{D_{10} \times D_{60}}$ between 1 and 3	
			GP	Poorly graded gravels, gravel-sand mixtrues, little or no fines		Not meeting all gradation requirements for GW	
		Gravels with fines (appreciable amount of fines)	GM[a] d	Silty gravels, gravel-sand-silt mixtures		Atterberg limits below "A" line or P.I. less than 4	Limits plotting within shaded area, above "A" line with P.I. between 4 and 7 are *borderline* cases requiring use of dual symbols
			GM[a] u				
			GC	Clayey gravels, gravel-sand-clay mixtures		Atterberg limits above "A" line or P.I. greater than 7	
	Sands (More than half of coarse fraction is smaller than No. 4 sieve size)	Clean sands (Little or no fines)	SW	Well-graded sands, gravelly sands, little or no fines		$C_u = \frac{D_{60}}{D_{10}}$ greater than 4; $C_c = \frac{(D_{30})^2}{D_{10} \times D_{60}}$ between 1 and 3	
			SP	Poorly graded sands, gravelly sands, little or no fines		Not meeting all gradation requirements for SW	
		Sands with fines (Appreciable amount of fines)	SM[a] d	Silty sands, sand-silt mixtures		Atterberg limits below "A" line or P.I. less than 4	Limits plotting within shaded area, above "A" line with P.I. between 4 and 7 are *borderline* cases requiring use of dual symbols
			SM[a] u				
			SC	Clayey sands, sand-clay mixtures		Atterberg limits above "A" line or P.I. greater than 7	
Fine-grained soils (More than half material is smaller than No. 200 sieve size)	Silts and clays (Liquid limit less than 50)		ML	Inorganic silts and very fine sands, rock flour, silty or clayey fine sands, or clayey silts with slight plasticity			
			CL	Inorganic clays of low to medium plasticity, gravelly clays, sandy clays, silty clays			
			OL	Organic silts and organic silty clays of low plasticity			
	Silts and clays (Liquid limit greater than 50)		MH	Inorganic silts, micaceous or diatomaceous fine sandy or silty soils, elastic silts			
			CH	Inorganic clays of high plasticity, fat clays			
			OH	Organic clays of medium to high plasticity, organic silts			
	Highly organic soils		Pt	Peat and other highly organic soils			



[a] Division of GM and SM groups into subdivisions of d and u are for roads and airfields only. Subdivision is based on Atterberg limits, suffix d used when L.L. is 28 or less and the P.I. is 6 or less; the suffix u is used when L.L. is greater than 28.

[b] Borderline classifications, used for soils possessing characteristics of two groups, are designated by combinations of group sympols. For example GW-GC, well-graded gravel-sand mixture with clay binder.

GENERAL NOTES

SAMPLE IDENTIFICATION

All samples are visually classified in general accordance with the Unified Soil Classification System (ASTM D-2487-75 or D-2488-75)

DESCRIPTIVE TERM (% BY DRY WEIGHT)

Trace:	1-10%
Little:	11-20%
Some:	21-35%
And/Adjective	36-50%

PARTICLE SIZE (DIAMETER)

Boulders:	8 inch and larger
Cobbles:	3 inch to 8 inch
Gravel:	coarse - ¾ to 3 inch
	fine – No. 4 (4.76 mm) to ¾ inch
Sand:	coarse – No. 4 (4.76 mm) to No. 10 (2.0 mm)
	medium – No. 10 (2.0 mm) to No. 40 (0.42 mm)
	fine – No. 40 (0.42 mm) to No. 200 (0.074 mm)
Silt:	No. 200 (0.074 mm) and smaller (non-plastic)
Clay:	No 200 (0.074 mm) and smaller (plastic)

SOIL PROPERTY SYMBOLS

Dd:	Dry Density (pcf)
LL:	Liquid Limit, percent
PL:	Plastic Limit, percent
PI:	Plasticity Index (LL-PL)
LOI:	Loss on Ignition, percent
Gs:	Specific Gravity
K:	Coefficient of Permeability
w:	Moisture content, percent
qp:	Calibrated Penetrometer Resistance, tsf
qs:	Vane-Shear Strength, tsf
qu:	Unconfined Compressive Strength, tsf
qc:	Static Cone Penetrometer Resistance (correlated to Unconfined Compressive Strength, tsf)
PID:	Results of vapor analysis conducted on representative samples utilizing a Photoionization Detector calibrated to a benzene standard. Results expressed in HNU-Units. (BDL=Below Detection Limit)

DRILLING AND SAMPLING SYMBOLS

SS:	Split-Spoon
ST:	Shelby Tube – 3 inch O.D. (except where noted)
CS:	3 inch O.D. California Ring Sampler
DC:	Dynamic Cone Penetrometer per ASTM Special Technical Publication No. 399
AU:	Auger Sample
DB:	Diamond Bit
CB:	Carbide Bit
WS:	Wash Sample
RB:	Rock-Roller Bit
BS:	Bulk Sample
Note:	Depth intervals for sampling shown on Record of Subsurface Exploration are not indicative of sample recovery, but position where sampling initiated

N: Penetration Resistance per 12 inch interval, or fraction thereof, for a standard 2 inch O.D. (1⅜ inch I.D.) split spoon sampler driven with a 140 pound weight free-falling 30 inches. Performed in general accordance with Standard Penetration Test Specifications (ASTM D-1586). N in blows per foot equals sum of N-Values where plus sign (+) is shown.

Nc: Penetration Resistance per 1¾ inches of Dynamic Cone Penetrometer. Approximately equivalent to Standard Penetration Test N-Value in blows per foot.

Nr: Penetration Resistance per 12 inch interval, or fraction thereof, for California Ring Sampler driven with a 140 pound weight free-falling 30 inches per ASTM D-3550. Not equivalent to Standard Penetration Test N-Value.

SOIL STRENGTH CHARACTERISTICS

COHESIVE (CLAYEY) SOILS

COMPARATIVE CONSISTENCY	BLOWS PER FOOT (N)	UNCONFINED COMPRESSIVE STRENGTH (TSF)
Very Soft	0 - 2	0 - 0.25
Soft	3 - 4	0.25 - 0.50
Medium Stiff	5 – 8	0.50 - 1.00
Stiff	9 – 15	1.00 - 2.00
Very Stiff	16 – 30	2.00 - 4.00
Hard	31+	4.00+

NON-COHESIVE (GRANULAR) SOILS

RELATIVE DENSITY	BLOWS PER FOOT (N)
Very Loose	0 - 4
Loose	5 - 10
Firm	11 - 30
Dense	31 - 50
Very Dense	51+

DEGREE OF PLASTICITY	PI
None to Slight	0 - 4
Slight	5 - 10
Medium	11 - 30
High to Very High	31+

DEGREE OF EXPANSIVE POTENTIAL	PI
Low	0 - 15
Medium	15 - 25
High	25+

Important Information About Your Geotechnical Engineering Report

Subsurface problems are a principal cause of construction delays, cost overruns, claims, and disputes.

The following information is provided to help you manage your risks.

Geotechnical Services Are Performed for Specific Purposes, Persons, and Projects

Geotechnical engineers structure their services to meet the specific needs of their clients. A geotechnical engineering study conducted for a civil engineer may not fulfill the needs of a construction contractor or even another civil engineer. Because each geotechnical engineering study is unique, each geotechnical engineering report is unique, prepared *solely* for the client. No one except you should rely on your geotechnical engineering report without first conferring with the geotechnical engineer who prepared it. *And no one — not even you* — should apply the report for any purpose or project except the one originally contemplated.

Read the Full Report

Serious problems have occurred because those relying on a geotechnical engineering report did not read it all. Do not rely on an executive summary. Do not read selected elements only.

A Geotechnical Engineering Report Is Based on A Unique Set of Project-Specific Factors

Geotechnical engineers consider a number of unique, project-specific factors when establishing the scope of a study. Typical factors include: the client's goals, objectives, and risk management preferences; the general nature of the structure involved, its size, and configuration; the location of the structure on the site; and other planned or existing site improvements, such as access roads, parking lots, and underground utilities. Unless the geotechnical engineer who conducted the study specifically indicates otherwise, do not rely on a geotechnical engineering report that was:

- not prepared for you,
- not prepared for your project,
- not prepared for the specific site explored, or
- completed before important project changes were made.

Typical changes that can erode the reliability of an existing geotechnical engineering report include those that affect:

- the function of the proposed structure, as when it's changed from a parking garage to an office building, or from a light industrial plant to a refrigerated warehouse,
- elevation, configuration, location, orientation, or weight of the proposed structure,
- composition of the design team, or
- project ownership.

As a general rule, *always* inform your geotechnical engineer of project changes—even minor ones—and request an assessment of their impact. *Geotechnical engineers cannot accept responsibility or liability for problems that occur because their reports do not consider developments of which they were not informed.*

Subsurface Conditions Can Change

A geotechnical engineering report is based on conditions that existed at the time the study was performed. *Do not rely on a geotechnical engineering report* whose adequacy may have been affected by: the passage of time; by man-made events, such as construction on or adjacent to the site; or by natural events, such as floods, earthquakes, or groundwater fluctuations. *Always* contact the geotechnical engineer before applying the report to determine if it is still reliable. A minor amount of additional testing or analysis could prevent major problems.

Most Geotechnical Findings Are Professional Opinions

Site exploration identifies subsurface conditions only at those points where subsurface tests are conducted or samples are taken. Geotechnical engineers review field and laboratory data and then apply their professional judgment to render an opinion about subsurface conditions throughout the site. Actual subsurface conditions may differ—sometimes significantly—from those indicated in your report. Retaining the geotechnical engineer who developed your report to provide construction observation is the most effective method of managing the risks associated with unanticipated conditions.

A Report's Recommendations Are *Not* Final

Do not overrely on the construction recommendations included in your report. *Those recommendations are not final,* because geotechnical engineers develop them principally from judgment and opinion. Geotechnical engineers can finalize their recommendations only by observing actual

subsurface conditions revealed during construction. *The geotechnical engineer who developed your report cannot assume responsibility or liability for the report's recommendations if that engineer does not perform construction observation.*

A Geotechnical Engineering Report Is Subject to Misinterpretation

Other design team members' misinterpretation of geotechnical engineering reports has resulted in costly problems. Lower that risk by having your geotechnical engineer confer with appropriate members of the design team after submitting the report. Also retain your geotechnical engineer to review pertinent elements of the design team's plans and specifications. Contractors can also misinterpret a geotechnical engineering report. Reduce that risk by having your geotechnical engineer participate in prebid and preconstruction conferences, and by providing construction observation.

Do Not Redraw the Engineer's Logs

Geotechnical engineers prepare final boring and testing logs based upon their interpretation of field logs and laboratory data. To prevent errors or omissions, the logs included in a geotechnical engineering report should *never* be redrawn for inclusion in architectural or other design drawings. Only photographic or electronic reproduction is acceptable, *but recognize that separating logs from the report can elevate risk.*

Give Contractors a Complete Report and Guidance

Some owners and design professionals mistakenly believe they can make contractors liable for unanticipated subsurface conditions by limiting what they provide for bid preparation. To help prevent costly problems, give contractors the complete geotechnical engineering report, *but* preface it with a clearly written letter of transmittal. In that letter, advise contractors that the report was not prepared for purposes of bid development and that the report's accuracy is limited; encourage them to confer with the geotechnical engineer who prepared the report (a modest fee may be required) and/or to conduct additional study to obtain the specific types of information they need or prefer. A prebid conference can also be valuable. *Be sure contractors have sufficient time* to perform additional study. Only then might you be in a position to give contractors the best information available to you, while requiring them to at least share some of the financial responsibilities stemming from unanticipated conditions.

Read Responsibility Provisions Closely

Some clients, design professionals, and contractors do not recognize that geotechnical engineering is far less exact than other engineering disciplines. This lack of understanding has created unrealistic expectations that have led to disappointments, claims, and disputes. To help reduce the risk of such outcomes, geotechnical engineers commonly include a variety of explanatory provisions in their reports. Sometimes labeled "limitations" many of these provisions indicate where geotechnical engineers' responsibilities begin and end, to help others recognize their own responsibilities and risks. *Read these provisions closely.* Ask questions. Your geotechnical engineer should respond fully and frankly.

Geoenvironmental Concerns Are Not Covered

The equipment, techniques, and personnel used to perform a *geoenvironmental* study differ significantly from those used to perform a *geotechnical* study. For that reason, a geotechnical engineering report does not usually relate any geoenvironmental findings, conclusions, or recommendations; e.g., about the likelihood of encountering underground storage tanks or regulated contaminants. *Unanticipated environmental problems have led to numerous project failures.* If you have not yet obtained your own geoenvironmental information, ask your geotechnical consultant for risk management guidance. *Do not rely on an environmental report prepared for someone else.*

Obtain Professional Assistance To Deal with Mold

Diverse strategies can be applied during building design, construction, operation, and maintenance to prevent significant amounts of mold from growing on indoor surfaces. To be effective, all such strategies should be devised for the *express purpose* of mold prevention, integrated into a comprehensive plan, and executed with diligent oversight by a professional mold prevention consultant. Because just a small amount of water or moisture can lead to the development of severe mold infestations, a number of mold prevention strategies focus on keeping building surfaces dry. While groundwater, water infiltration, and similar issues may have been addressed as part of the geotechnical engineering study whose findings are conveyed in this report, the geotechnical engineer in charge of this project is not a mold prevention consultant; ***none of the services performed in connection with the geotechnical engineer's study were designed or conducted for the purpose of mold prevention. Proper implementation of the recommendations conveyed in this report will not of itself be sufficient to prevent mold from growing in or on the structure involved.***

Rely, on Your ASFE-Member Geotechncial Engineer for Additional Assistance

Membership in ASFE/The Best People on Earth exposes geotechnical engineers to a wide array of risk management techniques that can be of genuine benefit for everyone involved with a construction project. Confer with you ASFE-member geotechnical engineer for more information.

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The Best People on Earth

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CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Authorize City Manager to Enter into a Memorandum of Understanding with the MUSD for Expansion of After the Bell for the Extended Learning Opportunities Program (Staff Contact: Renee Lorentzen, Director of Recreation and Community Services, 408-586-3409)**
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	6/21/2022
	Recommendation: Authorize City Manager to Enter into a Memorandum of Understanding with the MUSD for Expansion of After the Bell for the Extended Learning Opportunities Program

BACKGROUND:

The City of Milpitas' Recreation and Community Services Department provides the After the Bell (ATB) program at seven (7) elementary school sites, serving over 400 Milpitas youth annually, grades 1 – 6, from bell dismissal to 6:00 p.m. every day school is in session.

As part of the adoption of the California State Budget, the State provided over $1.75 billion for the Expanded Learning Opportunities Program (ELOP) in funding for afterschool and summer school enrichment programs with a focus on Local Educational Agencies (LEA) with the highest concentration of targeted disadvantaged students. The Milpitas Unified School District (MUSD) approached Recreation and Community Services staff to expand the existing After the Bell (ATB) program and serve additional at-risk youth as identified by the MUSD, after school at eight (8) elementary school sites, for MUSD enrolled students, grades K - 6.

To further support, and in the spirit of collaboration, City staff drafted a Memorandum of Understanding for the Expansion of ATB for ELOP between the City of Milpitas and the MUSD.

ANALYSIS:

Due to available State grant funding for ELOP, the MUSD is able to cover costs to expand the ATB program to accommodate eligible ELOP students. Per the MOU, ATB would operate at eight (8) elementary school sites for grades K-6th as follows: Burnett, Curtner, Mattos, Pomeroy, Sinnott, Spangler, Weller, and Zanker schools, from bell dismissal to 6:00 p.m., when a school site is in session. The MOU is drafted to reflect the responsibilities of both agencies (see attached). Key terms in the agreement are:

City Terms

Per the MOU the City will:

- staff the **ELOP/ATB Program (Program)** and conduct Program operations

- manage the Program enrollment of eligible, interested Program participants through Recreation and Community Services software, including but not limited to all applicable waivers and emergency contact forms.

- maintain safe Program child:leader ratios.

- establish and create Program materials and conduct all communication including but not limited to Program protocols, codes of conduct, program calendars, and parent directives.

- invoice the MUSD for 1) enrollment fees based on the number of children enrolled, and 2) for two (2) Senior Program Leads

MUSD Terms
Per the MOU the MUSD will:

- identify the students qualified for the Program by school site and communicate to parents of eligible students how to sign up for ATB through the City's enrollment platform

- provide access to classrooms, multi-use room, restrooms, etc., as well as onsite storage for Program equipment for all ATB participants

- pay the enrollment fees for eligible and enrolled youth to the City

- reimburse the City for the monthly cost for two (2) Program Leads

The final number of ELOP participants will be determined mid-summer. Once final enrollment numbers are known, staff will bring forward to City Council an amendment to the City's FY2022-23 budget for program expenditures fully offset with new revenues.

POLICY ALTERNATIVE(S):

Alternative 1: Do not authorize the City Manager to Enter into a Memorandum of Understanding with the MUSD for Expansion of After the Bell for the Extended Learning Opportunities Program
Pros: Staff can stop work on the expansion and focus on other projects and tasks
Cons: Should ATB not provide services for ELOP, another afterschool care provider will be contracted with the potential of ATB not being held at any elementary school site, greatly reducing department and City revenue streams.
Reason for Not Recommending: Should ATB not provide services for ELOP, another afterschool care provider will be contracted for this service, with the potential of ATB not being held at any elementary school site, greatly reducing department and City revenue streams.

FISCAL IMPACT:
Fiscal impact at this time is unknown. The final number of ELOP participants will be determined mid-summer. Once final enrollment numbers are known, staff will bring forward to City Council an amendment to the City's FY2022-23 budget for program expenditures fully offset with new revenues. This budget amendment may be addressed in the FY2022-23 mid-year budget report or sooner.

RECOMMENDATION:
Authorize City Manager to Enter into a Memorandum of Understanding with the MUSD for Expansion of After the Bell for the Extended Learning Opportunities Program

Attachment(s):
Draft MOU

MEMORANDUM OF AGREEMENT
BETWEEN THE CITY OF MILPITAS AND MILPITAS UNIFIED SCHOOL DISTRICT
FOR THE PROVISION OF EXPANDED AFTER THE BELL (ATB) PROGRAM FOR THE EXPANDED LEARNING OPPORTUNITIES PROGRAM TO SUPPORT YOUTH

This Memorandum of Agreement ("Agreement") is made and entered into this ____ day of _____, 2022 ("Effective Date"), by and between the City of Milpitas, a municipal corporation of the State of California ("City") and the Milpitas Unified School District, a California public school district ("District"). City and District are sometimes referred to individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, the City has offered an afterschool program called "After the Bell" ("ATB") in cooperation with the District on District sites for various decades; and

WHEREAS, After The Bell currently serves students grades 1 – 6 at seven (7) elementary District sites; and

WHEREAS, the State of California approved the Expanded Learning Opportunities Program (ELOP) funding as part of the approval of the FY 2021-22 Adopted Budget; and

WHEREAS, the ELOP funding distributed to school districts is provided to support unduplicated students that are eligible for free or reduced meals, English learner, or foster youth/McKinney Vento to participate in after school programs; and

WHEREAS, the District has requested a partnership to provide support to its students in need of afterschool care in accordance with State required provision of ELOP; and

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the Parties agree as follows:

TERMS OF AGREEMENT

The Term of this Agreement shall be for school year 2022-23, starting August 10, 2022 and will be in effect from the Effective Date to June 2, 2023 until revoked, in writing, with a 30 day notice, by either party.

1. <u>City Responsibilities</u>:

   a. City is responsible for staffing the **ELOP/ATB Program (Program)** and conducting Program operations at eight (8) elementary school sites for grades K-6th as follows: Burnett, Curtner, Mattos, Pomeroy, Sinnott, Spangler, Weller, and Zanker schools, from bell dismissal to 6:00 p.m., when a school site is in session.

   b. City will manage the Program enrollment of eligible, interested Program participants through Recreation and Community Services software, including but not limited to all applicable waivers and emergency contact forms.

   c. City will maintain safe Program child:leader ratios. Site enrollment minimums and related Program monthly payments must cover total cost of at least two (2) site leader staff for Program participants. Enrollment minimums will be set through discussion by City and District by July 15.

d. City will establish and create Program materials and conduct all communication including but not limited to Program protocols, code of conduct, program calendars, and parent directives.

e. By August 4, the City will invoice District for a deposit of one month of Program enrollment fees based on the number of children enrolled by August 1. Thereafter, the City will invoice the District on the 4th of every month for the full Program enrollment costs for the past month's Program cost. For the last month of enrollment in the school year, the City will reconcile the deposit with the last month's program costs and either invoice the District for the shortfall or pay any surplus to the District in accordance with that reconciliation.

d. City will invoice the District on the 4th of every month for the total cost for two (2) Senior Program Leads, for the prior month's Program hours worked, which the District will have 30 days to pay.

2. District Responsibilities:

a. District will identify the students qualified for the Program by school site and communicate to parents of eligible students how to sign up for ATB through the City's enrollment platform.

b. District will provide Program students and leaders access to areas of the campus such as classrooms, multi-use room, restrooms, etc. during Program hours for both ATB and Program enrollees, as well as onsite storage for Program equipment.

c. District will pay City 100% of Program costs for enrolled students at the annual amount of $1,980 per student. District will be billed monthly by City and will pay City within 30 days of receipt of invoice.

d. Site enrollment minimum at the Sinnott Elementary school site must be maintained to cover total cost of two (2) site leader staff. Should enrollment fall below required minimum, District will cover the difference between enrollment fee revenue and site leader staff total cost.

e. District will pay City, 100% of the total cost for two (2) Program Leads, in an amount not to exceed $52,000. District will be billed monthly by City and will pay City within 30 days of receipt of invoice.

3. General Provisions:

Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this MOU. Any action, suit or proceeding related to or arising from this MOU shall be filed in the Santa Clara County Superior Court.

No Third-Party Beneficiaries. This MOU is made and entered into for the sole benefit of the parties hereto. No other person shall have any right of action based upon any provision of this MOU.

Joint Preparation. This MOU shall be deemed to have been prepared jointly and equally by the parties, and none of its terms shall be construed against any party on the ground that the party prepared the MOU or caused it to be prepared.

Entire Agreement. This MOU constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior agreements and

understandings, both written and oral. This MOU may not be modified or amended except in a writing signed by all parties hereto.

Authority to Execute. The persons executing this MOU on behalf of each of the parties warrant and represent that they have the authority to execute this MOU on behalf of the party for whom they execute and have the authority to bind the party to the obligations hereunder.

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

Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

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:

District:

Milpitas Unified School District
1331 E. Calaveras Boulevard
Milpitas, California 95035
Attn: Cheryl Jordan, Superintendent

City:

City of Milpitas
455 E. Calaveras Boulevard
Milpitas, California 95035
Attn: Steven McHarris, City Manager

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.

SIGNATURES PAGE

City of Milpitas

City Manager:

Signature:_____

Name:_____

Title:_____

Date:_____

City Attorney:
Signature:_____

Name:_____

Title: _____

Date:_____

Milpitas Unified School District

Superintendent:

Signature:_____

Name: _____

Title: _____

Date: _____

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Approve the Accounts Receivable Write-offs for the Fiscal Year ending June 30, 2022 (Lauren Lai, Finance Director, 408-586-3111)**
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	6/21/2022
	Recommendation: Approve the Accounts Receivable write-offs in the amount of $71,246 for the fiscal year ending June 30, 2022.

BACKGROUND:

As part of the annual preparation of the financial statements, staff reviews the City's accounts receivables or outstanding payments to the City. Any outstanding payment in excess of one year is considered for being written off, if after several attempts to collect payment including internal billing mailings, past due notices, phone call follow up and referral of the outstanding payment to a collection agency have been unsuccessful. The City of Milpitas Municipal Code I-5-3.00 titled "Write-off of Uncollectible Accounts," authorizes the City Manager and the Director of Finance, jointly, to write off as uncollectible up to $50,000.00 in total annually (and up to $10,000.00 for any single account or claim) on all accounts or claims which the City may have against all persons under certain conditions. When the City Manager and Director of Finance determine that the claim is (1) uncollectible; possibly collectible but collection would not be reasonably cost effective taking into consideration the probable necessary cost to the City in pursuing collection and the likelihood of collection; or not a valid, enforceable claim of the City. Since the annual write-off amount is in excess of $50,000, staff seeks Council approval.

ANALYSIS:

Depending on the total annual amount deemed uncollectible, staff recommends the attached listings of accounts receivable (AR) write-offs to City Council for approval. This report covers the period prior to June 2021. Attached in the Council's packet are two AR lists, one for utility accounts (water, and sewer) and the other for non-utility accounts that have remained unpaid for more than 12 months. The table below identifies AR categories, total amounts invoiced for the period of July 1, 2020 to June 30, 2021, proposed write-off amounts, and proposed write-off amount represented as of percent of total amounts invoiced. It should be noted that during this period, the City achieved an overall collection rate of 99.87%. The proposed write-offs amount of $71,246 is approximately 0.13% of all the amounts invoiced during the same period.

AR Category	Total Amount Invoiced	Proposed Write-off Amount	Write-Offs as a % of Amount Invoiced
Utility Accounts	$ 54,282,038	$8,420	0.02%
Business License	328,115	129	0.04%
Retirees Medical	33,427	438	1.31%
Fire Fees	103,343	16,031	15.51%
Police Charges	57,400	29,562	51.50%
Neighborhood Services Charges	17,433	6,208	35.61%
Miscellaneous	N/A	1,635	N/A
Loans	N/A	8,823	N/A
Total	**$ 54,821,726**	**$71,246**	**0.13%**

Finance staff invoices and collects payments for all utility accounts as well as miscellaneous accounts receivable (private development jobs, fire permits, fire false alarm, business licenses, retiree medical, police false alarms, police subpoena, animal regulation violations, and NBO Fines). For utility accounts, in accordance to Senate Bill 998 Discontinuance of residential water service, a bill is due for payment in 21 days from the bill date. Finance staff then sends a reminder notice 23 days from the bill date and final notice 65 days from the bill date. A telephone call follows 73 days from the bill date. The utility account will be tagged for shut off 80 days from the bill date. And if not paid, a utility account will be cut-off 85 days from the bill date after which point it will be sent to the City's collection agency, Collection Bureau of America (CBA). If cut-off and sent to collections, a utility customer will not be able to start new service until they have paid their outstanding balance in full; even if that balance has been written off from an accounting standpoint.

In fiscal year 2021-2022, the City applied for the water arrearages payment program from State Water Resources Control Board and provided financial assistance to community water systems with past due bills accrued during COVID-19 pandemic bill relief from March 2020 to June 2021. That program was able to assist residents to payoff water bill outstanding balance during that time period.

For miscellaneous accounts receivables, an invoice issued is due for payment in 28 days from issuance date of the invoice. If not paid on the due date, a reminder notice will be issued by Finance staff on the 28th day and due for payment in 14 days from issuance date of the reminder notice. If not paid on the due date, a Final Notice will be issued on the 42nd day and due for payment in 7 days from issuance date of Final Notice. If not paid on the due date, the account will be sent to the City's collection agency on the 49th day. If the account is for a developer, they will not be able to start new work in Milpitas if they have an outstanding balance.

Staff is also recommending Council write off one CDBG rehabilitation loan that was not collectable in this fiscal year. The total rehabilitation loan balance was $58,823. The loanee paid off $50,000 and the remaining loan amount of $8,823 was not collectable and therefore, requested to be written off. This loan was originally administered by Santa Clara County CDBG Program and erroneously liened for only $50,000.

POLICY ALTERNATIVE(S):

Alternative 1: Do not approve the proposed recommendation to write off accounts receivable.

Pros: None

Cons: Will not follow Generally Accepted Accounting Principles and the City's financials will be overstated.

Reason for Not Recommending: The City needs to ensure to follow financial practices consistent with Generally Accepted Accounting Principles. Following GAAP is a precursor towards an unqualified or "clean" financial audit.

FISCAL IMPACT:

Write offs of $71,246 from the outstanding accounts receivable will reduce the full-accrual fund balances of the General Fund by $62,826 and the Utility Funds by $8,420.

California Environmental Quality Act (CEQA):

Not applicable

RECOMMENDATION:

Approve the Accounts Receivable write-offs for the fiscal year ending June 30, 2022.

Attachment(s):

1. FY2020-2021 Utility Bills Write Off
2. FY2020-2021 Miscellaneous Accounts Receivable Write Off

City of Milpitas

Utility Bill Write Off (final date as of 6/30/21)

FY2021-2022

			TOTAL	8,419.88	
Account	Last Name	First Name	Final Bill Date	Amount Write Off	Reason
2001539	DULAY	STEPHEN	07/06/20	181.45	Closed Account
2014376	WETLESEN	PAMELA	06/28/21	664.52	Closed Account
2026914	GIL	RAMON	06/28/21	2,731.84	Closed Account
2028342	24-HOUR FITNESS CENTER INC (Jacklin location)		08/24/20	182.84	Bankruptcy
2032196	SUSHI MARU		04/27/20	367.74	Closed Business
2033347	MODI	SAURABH	05/24/21	543.67	Closed Account
2035875	VEA	TEUILA	06/21/21	1,248.00	Closed Account
2041575	BLE	OTOKONDA	05/24/21	1,389.30	Closed Account
2043517	PARAKKAT	MOHAMAD	03/12/21	371.89	Closed Account
2044575	DUMPLING MAMA		05/24/21	370.57	Closed Business
2045896	CHEN	XIUMIN	05/24/21	142.44	Closed Account
2046696	GERVACIO	XIOMARA	03/08/21	73.19	Closed Account
2047269	TRAN	BINH	07/17/20	152.43	Closed Account

FY 2021-2022 WRITE OFF

Miscellaneous Accounts Receivable ***as of June 30, 2021***

INVOICE NUMBER	DATE	CUSTOMER NAME	CUSTOMER ID NUMBER	AMOUNT	DESCRIPTION
I000046944	09/20/19	OS EDGE	00013082	129	Business License
		BUSINESS LICENSE		**$ 129**	
I000049230	01/08/21	ANTHONY GULARTE	00013173	219	AR Benefits
I000049388	02/05/21	ANTHONY GULARTE	00013173	219	AR Benefits
		RETIREE MEDICAL		**$ 438**	
I000047509	12/27/19	YUMMY YUMMY BAO	F19-0736	857	Fire Annual Fee
I000049073	12/18/20	VTA	F12-0175	910	Fire Annual Fee
I000049081	12/18/20	SCVTA -BART MILPITAS AUXILLARY	F16-0361	617	Fire Annual Fee
I000049087	12/18/20	CAMPUS 237 OWNER LLC	F17-0232	617	Fire Annual Fee
I000049102	12/18/20	CAMPUS 237 OWNER LLC	F18-0002	617	Fire Annual Fee
I000049095	12/18/20	ORINDA EQUITY PARTNERS, LLC	F19-0230	617	Fire Annual Fee
I000049096	12/18/20	Irvine Company	F20-0026	617	Fire Annual Fee
I000049063	12/18/20	UNION PACIFIC RAILROAD	F88-0016	617	Fire Annual Fee
I000049108	12/18/20	CONDOMINIUM COMPLEX	F94-0741	1,175	Fire Annual Fee
I000049082	12/18/20	SCVTA - BART SRC HVSS & SRR TP	F16-0363	1,526	Fire Annual Fee
I000049084	12/18/20	SCVTA - BART SME TPSS & SECTIO	F16-0552	617	Fire Annual Fee
I000049085	12/18/20	SCVTA - BART MILPITAS STATION	F16-0553	617	Fire Annual Fee
I000049536	03/19/21	APPLE	F20-0285	2,114	Fire Annual Fee
I000049541	03/19/21	VBIRYANIZ	F21-0467	295	Fire Annual Fee
I000049543	03/19/21	ADVANCE ENERGY INDUSTRIES, INC	F21-0472	910	Fire Annual Fee
I000049752	05/14/21	VERIZON WIRELESS	F21-0549	617	Fire Annual Fee
I000049754	05/14/21	HANSANG TOFU	F21-0556	295	Fire Annual Fee
		FIRE ANNUAL FEE		**$ 13,631**	
I000046771	08/16/19	SHELL BUILDING (55-91)	00012543	300	Fire False Alarm
I000047753	01/31/20	THE BENTO BOX	00013112	300	Fire False Alarm
I000048465	08/07/20	ESSEX PORTFOLIO LP	00012730	900	Fire False Alarm
I000049196	01/01/21	DCA ILARA INVESTORS LLC	00013184	300	Fire False Alarm
I000049432	02/19/21	AYGB MILPITAS LLC	00012768	600	Fire False Alarm
		FIRE FALSE ALARMS		**$ 2,400**	
I000048049	04/10/20	ADP LLC	00013133	150	PD False Alarm
I000048425	07/31/20	ADP LLC	00013133	500	PD False Alarm
I000048902	11/06/20	ADP LLC	00013133	250	PD False Alarm
I000048127	04/30/20	ADP, INC	00012781	250	PD False Alarm
I000048591	09/18/20	ADP, INC	00012781	250	PD False Alarm
I000048723	09/25/20	ADP, INC	00012781	250	PD False Alarm
I000047613	01/24/20	APEX APARTMENT	00012512	250	PD False Alarm
I000046512	07/19/19	ASHLEY FURNITURE	00012717	50	PD False Alarm

FY 2021-2022 WRITE OFF

Miscellaneous Accounts Receivable as of June 30, 2021

INVOICE NUMBER	DATE	CUSTOMER NAME	CUSTOMER ID NUMBER	AMOUNT	DESCRIPTION
I000047040	09/27/19	ASHLEY FURNITURE	00012717	500	PD False Alarm
I000047161	10/18/19	ASHLEY FURNITURE	00012717	500	PD False Alarm
I000047250	11/15/19	ASHLEY FURNITURE	00012717	250	PD False Alarm
I000047557	01/10/20	ASHLEY FURNITURE	00012717	250	PD False Alarm
I000048413	07/31/20	ASHLEY FURNITURE	00012717	1,150	PD False Alarm
I000048582	09/18/20	ASHLEY FURNITURE	00012717	1,500	PD False Alarm
I000048710	09/25/20	ASHLEY FURNITURE	00012717	750	PD False Alarm
I000048884	11/06/20	ASHLEY FURNITURE	00012717	500	PD False Alarm
I000049034	12/18/20	ASHLEY FURNITURE	00012717	500	PD False Alarm
I000047251	11/15/19	AT & T MOBILITY	00012720	150	PD False Alarm
I000047627	01/24/20	AT&T MOBILITY	00012338	500	PD False Alarm
I000048716	09/25/20	AT&T MOBILITY	00012338	50	PD False Alarm
I000049213	01/01/21	AT&T MOBILITY	00012338	100	PD False Alarm
I000049408	02/19/21	AT&T MOBILITY	00012338	250	PD False Alarm
I000047567	01/10/20	BARCO INC	00013101	250	PD False Alarm
I000047623	01/24/20	BARCO INC	00013101	750	PD False Alarm
I000049709	05/07/21	BYTON	00013207	50	PD False Alarm
I000048140	05/15/20	CENTURY THEATRES	00010177	50	PD False Alarm
I000048225	06/12/20	CENTURY THEATRES	00010177	100	PD False Alarm
I000048707	09/25/20	CENTURY THEATRES	00010177	250	PD False Alarm
I000047626	01/24/20	CHICK & TEA	00013088	100	PD False Alarm
I000047640	01/24/20	DAVE & BUSTERS	00010092	500	PD False Alarm
I000047616	01/24/20	DICK'S SPORTING GOODS	00012907	100	PD False Alarm
I000047553	01/10/20	DOLLAR TREE STORE	00010348	50	PD False Alarm
I000048886	11/06/20	DOLLAR TREE STORE	00010348	150	PD False Alarm
I000048431	07/31/20	FLOOR AND DECOR OUTLETS OF AME	00013149	150	PD False Alarm
I000048715	09/25/20	FLOOR AND DECOR OUTLETS OF AME	00013149	250	PD False Alarm
I000049043	12/18/20	FLOOR AND DECOR OUTLETS OF AME	00013149	250	PD False Alarm
I000049209	01/01/21	FLOOR AND DECOR OUTLETS OF AME	00013149	750	PD False Alarm
I000049405	02/19/21	FLOOR AND DECOR OUTLETS OF AME	00013149	250	PD False Alarm
I000049710	05/07/21	GOLDEN STATE URGENT CARE PROVI	00013208	150	PD False Alarm
I000049197	01/01/21	JOLLIBEE	00013175	100	PD False Alarm
I000046925	09/13/19	JONES LANG LASALLE AMERICAS IN	00013048	250	PD False Alarm
I000047045	09/27/19	JONES LANG LASALLE AMERICAS IN	00013048	1,000	PD False Alarm
I000047639	01/24/20	JONES LANG LASALLE AMERICAS IN	00013048	500	PD False Alarm

FY 2021-2022 WRITE OFF

Miscellaneous Accounts Receivable as of June 30, 2021

INVOICE NUMBER	DATE	CUSTOMER NAME	CUSTOMER ID NUMBER	AMOUNT	DESCRIPTION
I000047172	10/18/19	NAVAJO COMPANY	00013090	100	PD False Alarm
I000047167	10/18/19	NEW KING EGG ROLL II INC	00013066	250	PD False Alarm
I000047159	10/18/19	OLIVE GARDEN	00012491	250	PD False Alarm
I000049041	12/18/20	PAMELA I WETLESEN	00011140	400	PD False Alarm
I000048048	04/10/20	PARIS BAGUETTE	00013132	50	PD False Alarm
I000048717	09/25/20	PARIS BAGUETTE	00013132	350	PD False Alarm
I000048893	11/06/20	PARIS BAGUETTE	00013132	250	PD False Alarm
I000049215	01/01/21	PARIS BAGUETTE	00013132	250	PD False Alarm
I000049422	02/19/21	PSI WATER TECHNOLOGIES INC	00013192	50	PD False Alarm
I000047569	01/10/20	PULTE HOMES-THE FLATS	00013107	50	PD False Alarm
I000049201	01/01/21	ROUND TABLE PIZZA #2	00011015	50	PD False Alarm
I000047568	01/10/20	SHAPELL PROPERTIES	00013102	250	PD False Alarm
I000048885	11/06/20	SIERRA GATE LLC	00013150	250	PD False Alarm
I000048595	09/18/20	SURESITE CONSULTING GROUP LLC	00013163	150	PD False Alarm
I000048709	09/25/20	SURESITE CONSULTING GROUP LLC	00013163	1,000	PD False Alarm
I000048882	11/06/20	SURESITE CONSULTING GROUP LLC	00013163	250	PD False Alarm
I000049032	12/18/20	SURESITE CONSULTING GROUP LLC	00013163	250	PD False Alarm
I000048132	04/30/20	SUTTER WALK IN CARE	00013135	400	PD False Alarm
I000048142	05/15/20	SUTTER WALK IN CARE	00013135	250	PD False Alarm
I000048230	06/12/20	SUTTER WALK IN CARE	00013135	250	PD False Alarm
I000047263	11/15/19	TESLA ENERY OPERATIONS INC	00013100	650	PD False Alarm
I000047566	01/10/20	TESLA ENERY OPERATIONS INC	00013100	750	PD False Alarm
I000048047	04/10/20	TESLA ENERY OPERATIONS INC	00013100	50	PD False Alarm
I000048418	07/31/20	TESLA ENERY OPERATIONS INC	00013100	350	PD False Alarm
I000049049	12/18/20	TESLA ENERY OPERATIONS INC	00013100	250	PD False Alarm
I000048141	05/15/20	TIRES BY WHEEL WORKS	00010813	50	PD False Alarm
I000048227	06/12/20	TIRES BY WHEEL WORKS	00010813	100	PD False Alarm
I000048586	09/18/20	TIRES BY WHEEL WORKS	00010813	250	PD False Alarm
I000048892	11/06/20	TIRES BY WHEEL WORKS	00010813	250	PD False Alarm
I000047039	09/27/19	TUFF SHED1	00012704	50	PD False Alarm
I000047650	01/24/20	TURING LYON MANAGEMENT GROUP	00013122	50	PD False Alarm
I000046932	09/13/19	U.S. TELPACIFIC	00013080	50	PD False Alarm
I000048420	07/31/20	U.S. TELPACIFIC	00013080	600	PD False Alarm
I000048720	09/25/20	U.S. TELPACIFIC	00013080	250	PD False Alarm
I000049199	01/01/21	UNITED RENTALS	00013151	100	PD False Alarm
I000047253	11/15/19	WELLBOUND OF MILPITAS	00012950	250	PD False Alarm
I000047560	01/10/20	WELLBOUND OF MILPITAS	00012950	1,000	PD False Alarm
I000047036	09/27/19	WELLS FARGO BANK 1	00010865	250	PD False Alarm
I000048434	07/31/20	WORLDS YOGA MILPITAS	00013152	900	PD False Alarm
I000048580	09/18/20	WORLDS YOGA MILPITAS	00013152	500	PD False Alarm
I000048881	11/06/20	WORLDS YOGA MILPITAS	00013152	250	PD False Alarm

FY 2021-2022 WRITE OFF

Miscellaneous Accounts Receivable as of June 30, 2021

INVOICE NUMBER	DATE	CUSTOMER NAME	CUSTOMER ID NUMBER	AMOUNT	DESCRIPTION
I000048426	07/31/20	XL CONSTRUCTION	00010531	50	PD False Alarm
I000048592	09/18/20	XL CONSTRUCTION	00010531	100	PD False Alarm
I000049420	02/19/21	XL CONSTRUCTION	00010531	250	PD False Alarm
		POLICE FALSE ALARMS		**$ 27,350**	
I000048878	10/30/20	JEFFREY M VUCINICH	00013174	251	PD Subpoena
I000049248	01/15/21	JEFFREY M VUCINICH	00013174	1,961	PD Subpoena
		POLICE SUBPOENA		**$ 2,212**	
I000044848	09/14/18	LISETTE RODRIGUEZ	00012982	200	Animal Violation
I000044958	09/28/18	DANIEL NOAH BESTER	00012986	263	Animal Violation
I000045068	11/02/18	ROY G JOHNSON	00012993	225	Animal Violation
I000045069	11/02/18	RONNIE CRUZ	00012994	50	Animal Violation
I000045379	01/04/19	BADESHA MANPREET AND JASBIR	00013011	100	Animal Violation
I000045519	02/01/19	WILLIAM H HUGHES	00012843	100	Animal Violation
I000045520	02/01/19	WILLIAM H HUGHES	00012843	100	Animal Violation
		ANIMAL VIOLATIONS		**$ 1,038**	
I000044770	08/24/18	YONG ONG N ET AL	00012965	100	NBO Fines
I000045070	11/02/18	SAROJ SABHERWAL TRUSTEE	00012995	1,700	NBO Fines
I000045288	12/14/18	ERICK F PALMA ET AL	00013004	800	NBO Fines
I000045380	01/04/19	200 SERRA WAY LLC	00013012	300	NBO Fines
I000045590	03/08/19	VIAM DEVELOPMENT 111 LP	00013034	100	NBO Fines
I000045965	04/26/19	200 SERRA WAY LLC	00013012	300	NBO Fines
I000045964	04/26/19	200 SERRA WAY LLC	00013012	1,300	NBO Fines
I000046415	06/21/19	STEVEN MOHR	00012537	300	NBO Fines
I000048246	06/19/20	STEVEN MOHR	00012537	270	NBO Fines
		NBO FINES		**$ 5,170**	
I000046499	07/05/19	ANTHONY PHAN	00013056	1,635	Misc
		MISC		**$ 1,635**	
		CDBG LOAN		8,823	Loan
		LOANS		**$ 8,823**	
		OVERALL TOTAL		**$ 62,826**	

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Approve and Authorize the City Manager to Execute the Agreement for a One-Year Renewal with Brown & Brown for Excess Workers' Compensation Insurance Coverage for a total agreement amount of $302,134 Staff Contact: Jeannine Seher, Human Resources Director, 408-586-3086)**
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	6/21/2022
	Recommendation: Approve and Authorize the City Manager to Execute the Agreement for a One-Year Renewal with Brown & Brown for Excess Workers' Compensation Insurance Coverage in the amount of $302,134

Background:
On July 1, 2021, the City renewed its policy with Brown & Brown Insurance Services of California, Inc. ("Brown & Brown") for one year to provide Excess Workers' Compensation Insurance coverage to the City (the "Agreement") in accordance with any applicable requirements of federal, state or local laws or rules and/or regulations. The current policy is set to expire June 30, 2022.

Brown & Brown, Inc. is among the top 5 largest insurance brokers worldwide. The company provides a variety of insurance products and services to corporate, institutional, professional and individual clients. Head-quartered in Daytona Beach, Florida, Brown & Brown was founded in 1939. Following a merger in 1993, the company became publicly traded on Nasdaq. In 1998, the company became listed on the New York Stock Exchange (NYSE: BRO) and joined the S&P 500 in 2021. Brown & Brown handles clients' premiums in excess of $20 Billion annually and has 6,000+ retail teammates.

Analysis:
Brown & Brown approached four (4) companies to bid the Excess Workers' Compensation program. Safety National, the incumbent carrier, provided the quote which includes an 8.2% increase, which is consistent with its other quoted premiums in the market for 2022/23. Two companies declined to quote, one of which was unable to compete with the current plan, and the other declined due to the minimum retention requirements of the plan. A third company did not submit a timely quote.

Safety National offered multiple tiers of coverage levels with associated premiums as described in Attachment 2, page 6. Staff is recommending a renewal of excess workers' compensation insurance coverage with Brown & Brown using the coverage option that best balances cost effectiveness and the assumed risk to the City. By way of the new policy, the annual deposit premium not-to-exceed amount will be $302,134 for coverage from July 1, 2022, through June 30, 2023.

Policy Alternatives:

Alternative 1: Do not approve and authorize the City Manager to renew the Policy with Brown & Brown for one year.

Pros: There is no benefit to discontinuing coverage with Brown & Brown. The City will continue to be liable for workers' compensation claims.

Cons: Not having this coverage in place opens the risk to potentially higher liability for the City.

Reasons not recommended: The City will have a gap in coverage for Excess Workers' Compensation and staff would have limited time to request new proposals from other vendors.

Fiscal Impact:
The City has already established an appropriation for this request for FY 2022-23.

California Environmental Quality Act:
Approval of the recommendation is not an activity defined as a "project" under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines 15061(b) (3) and 15378(b)(4) either because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment and/or because the action is financial and/or administrative and does not directly impact the environment.

Recommendation:
Approve and Authorize the City Manager to Execute the Agreement for a One-Year Renewal with Brown & Brown for Excess Workers' Compensation Insurance Coverage in the amount of $302,134

Attachments:
1. 2021-22 Excess Workers' Compensation Bind Letter
2. 2022-23 Excess Workers' Compensation Proposal

Brown & Brown INSURANCE®

SOUTHERN CALIFORNIA

July 8, 2021

City of Milpitas
Jeannine Seher
455 East Calaveras Boulevard
Milpitas, CA 95035

RE: Policy: Workers Compensation
Writing Company: Safety National Casualty Corporation
Policy No: SP4065322
Policy Period: 7/1/2021 to 7/1/2022

Dear Jeannine:

We have requested the insurance company to bind your insurance coverages based on the limits as set forth in the attached binder for a total premium of $271,460. Higher limits may be available, please let us know should you require an alternative quotation. Enclosed please find the following items regarding this policy:

1. Insurance Binder as evidence of insurance with Safety National Casualty Corporation for Workers Compensation.
2. Renewal Invoice. **Please make your check payable to *Brown & Brown Insurance Services of California, Inc.*** We would appreciate your payment **within 10 days**.
3. Certificate of Insurance Request Form - Please use this form when requesting all certificates of insurance.

Thank you for allowing us to provide this coverage for you. If you have any questions, please do not hesitate to contact me at (714)221-1844 or Mark Zahoryin at (714)221-1827.

Sincerely,

Katia Thomas

Katia Thomas
Account Manager
Enclosure

California License 0D04053
2401 E. Katella Ave., Suite 550, Anaheim, CA 92806
1 (800) 228-7975 ♦ (714)-221-1800 ♦ Fax: (714)-221-4196

Loveland & Smart Insurance Services, Inc.
8300 Fair Oaks Blvd. Ste. 306; Carmichael, CA 95608
Telephone: (916) 362-5500 ~ Fax: (916) 362-5595 License No. 0C42409

June 30, 2021

Binder # **005322**
Policy # **SP 4065322**

Mark Zahoryin
Brown & Brown of California / Cal-Surance
2401 E. Katella Ave., STE 550
Anaheim, CA 92806

Facsimile: 714-221-4128

Re: **CITY OF MILPITAS**
Excess Workers' Compensation and Employer's Liability
State of California

Dear Mark,

We are pleased to confirm our binding instructions for Safety National Casualty Corporation as described below. If you find any changes are needed please let me know at your earliest convenience.

1. Insured: **CITY OF MILPITAS**

2. Address: **455 EAST CALAVERAS BOULEVARD, MILPITAS, CA 95035**

3. Effective Date of Policy: **July 1, 2021**

4. Insurance Carrier: **SAFETY NATIONAL CASUALTY CORPORATION**

5. Insured's Retention for each occurrence or each employee for disease: **$1,000,000 – Police**
$1,000,000 - Firefighters
$750,000 – All Other

6. Limit of Indemnity is **$20,000,000** each occurrence for Workers' Compensation benefits. Employer's Liability limits are **$1,000,000** each occurrence with a **$1,000,000** policy limit.

7.

Estimated Annual Remuneration:	$	60,177,251.00
Rate Per $100 of Remuneration:	$	0.4511
Deposit Premium:	$	271,460.00
Minimum Premium:	$	244,314.00

Thank you for the renewal. We look forward to working with you in the future.

Regards,

Rett A. Smart

Enclosure

CERTIFICATE OF INSURANCE REQUEST FORM

(Please copy and complete as needed, and e-mail or fax us.)

DATE: _____

TO: _____

FROM: City of Milpitas

Policy Holder Name (Insured) _____ *Phone Number* _____

Contact Name _____ *Fax Number* _____

SUBJECT: Please issue a Certificate of Insurance to the following Certificate Holder:

Contact Name: _____

Business Name: _____

Street Address: _____

City: _____ State: _____ Zip: _____

Event(s) Date(s): _____

Date Required: _____

E-Mail ☐ Fax Number ☐ : _____

Mail ☐

Additional Insured Required? ☐ Yes ☐ No If yes, for what activity, event or purpose:

Loss Payee Required? ☐ Yes ☐ No

_____

_____

_____

Additional Requirements or Special Wording:

_____

_____

_____

Please return the completed form to Katia Thomas at kthomas@bbsocal.com.
If you have any questions, please call (714)221-1844.
Thank you.

Brown & Brown
2401 E. Katella Ave., Suite 550
Anaheim, CA 92626
Local Presence, National Strength
NYSE: BRO
www.bbrown.com

Excess Workers' Compensation

Presented by:

Mark Zahoryin

Brown & Brown Insurance Services of California, Inc.
2401 E. Katella Ave., Suite 550
Anaheim, CA 92806
Phone: (714)221-1800
License No. 0D04053
www.bbrown.com

This proposal is for illustration purposes only. Please refer to the policy for actual terms/conditions.
Coverage cannot be bound until a binder has been recei

Thank you for inviting us to develop and present a Risk Solution Program to you. We welcome the opportunity to become involved with your company. We have worked to identify your needs and concerns, and to develop a program for your insurance. Brown & Brown, Inc. is among the top 5 largest insurance brokers worldwide.[1] The company provides a variety of insurance products and services to corporate, institutional, professional and individual clients. Headquartered in Daytona Beach, Florida, Brown & Brown was founded in 1939. Following a merger in 1993, the company became publicly traded on Nasdaq. In 1998, the company became listed on the New York Stock Exchange (NYSE: BRO), and joined the S&P 500 in 2021. Brown & Brown handles clients' premiums in excess of $20 Billion annually and has 6,000+ retail teammates.

While size is not the sole criteria for choosing an insurance agent, it does enable us to offer our clients clout in the marketplace and unmatched service capability.

Please feel free to visit our website at www.bbrown.com.

This brief description of insurance coverage is being provided as an accommodation only and is not intended to cover or describe all policy terms. In the event of difference, the policy will prevail. For more complete information on the scope and limits of coverage please refer to the policy document.

[1] As listed in Business Insurance magazine, July 2021 edition

Service Team

No matter how comprehensive or price competitive your insurance program is, it is still people who must service it to insure that coverage will respond when needed.

Mark Zahoryin
Account Executive

Phone: (714)221-1827
Fax: (714) 221-4196
Mark.Zahoryin@bbrown.com

Mark Zahoryin will oversee all aspects of your program.

Katia Thomas
Account Manager

Phone: (714)221-1844
Fax: (714) 221-4196
katia.thomas@bbrown.com

Katia Thomas will assist with the daily servicing of your account, including endorsements, certificate requests, client services, program design, accounting, quality assurance and market relationships.

Feel free to contact anyone on this list if you have questions or concerns regarding your insurance policy.

This proposal is for illustration purposes only. Please refer to the policy for actual terms/conditions.
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Premium Summary & Comparison

Premiums as proposed:

Line of Coverage	2021/2022 Expiring Premiums	2022/2023 Renewal Premiums
Excess Workers Compensation – Deposit Premium	$271,460	$302,134
Minimum Premium	$244,314	$271,921

Safety National has offered a renewal quote at the expiring retentions with a rate increase of about 8.2% over last year

- Safety National has provided quotes at various retention options so if you increase the retentions the rates go down, see page 6 of the proposal.

Options:

See Quote Sheet for retention options on page 6.
Renewal Comparison on page 10.

Payment Plan:

- Payment in Full
- Please make your check payable to Brown & Brown Insurance Services of California
- Epay – There is a 3.25% fee if using a credit card and a $3 fee for ACH.
  Here is the link: https://bbsocal.epaypolicy.com/
- Check by Fax – No Fee
- Wire Transfer – We do not charge a fee for this. However, your bank might charge one.

This proposal is based upon the exposures to loss made known to the Agency. Any changes in these exposures (i.e., new operations, new products, additional states of hire, etc.) need to be promptly reported to us in order that proper coverage(s) may be put into place.

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Attach to and forming a part our quotation dated: June 2, 2022.

Broker No.: 0C20311

Item # C9.

Applicant: City of Milpitas, CA

	WC Limit of Liability	Employer's Liability Sub-Limit	Self-Insured Retention	Deposit Premium Minimum Premium	Rate per $100 of Payroll	Security
A)	$20,000,000	$1,000,000 per Occ $1,000,000 policy Agg	$750,000 All Others $1,000,000 Police & Fire $1,000,000 per Employee Wildland Firefighting Endt.	$302,134 $271,921	0.488	Safety National Casualty Corp./ A.M. Best Rated: A++ XV
B)	$20,000,000	$1,000,000 per Occ $1,000,000 policy Agg	$1,000,000-All Others $1,000,000 per Employee Wildland Firefighting Endt.	$289,318 $260,386	0.4673	Safety National Casualty Corp./ A.M. Best Rated: A++ XV
C)	$20,000,000	$1,000,000 per Occ $1,000,000 policy Agg	$1,000,000 All Others $1,250,000 Police & Fire $1,250,000 per Employee Wildland Firefighting Endt.	$250,560 $225,504	0.4047	Safety National Casualty Corp./ A.M. Best Rated: A++ XV
D)	**STATUTORY**	$1,000,000 per Occ $1,000,000 policy Agg	$750,000 All Others $1,000,000 Police & Fire $1,000,000 per Employee Wildland Firefighting Endt.	$326,280 $293,652	0.527	Safety National Casualty Corp./ A.M. Best Rated: A++ XV

Pending Arch Insurance Company / A.M. Best Rated: A+ XV

Declination Minimum retention for Police & Firefighters in CA is $1,500,000. ACE Insurance Company / A.M. Best Rated: A+ XV

Declination - Unable to compete with the current policy rate based on the current loss history. Midwest Employers Casualty Co. / A.M. Best Rated: A+ XV

Terms and Conditions

1) Rates are based on an estimated annual remuneration of $61,912,645.

2) Safety National's quote is subject to their policy form and the following endorsements:
0275 00 0908 (XWC) Waiver of Subrogation-Negligence Excluded
0288 00 0908 (XWC) Employers' Liability Per Occurrence & Aggregate Max Limits of Liability,
0463 00 1197 (XWC) Voluntary Compensation Endorsement
1810 01 0712 (XWC) California Short Rate Cancellation Provision-Specific Excess,
0288 04 0908 (XWC) Employers' Liability Per Occurrence & Aggregate Maximum Limit of Liability-CA,
0557 00 1092 (XWC) Self-Insured Retention Per Occurrence-Police Officers& Drivers,
0467 02 1105 (XWC) Employers' Liability Maximum Limit and aggregate maximum Limit of Indemnity,
1864 17 1217 (XWC) Self-Insured Retention Per Occurrence-Wildland Firefighting
1199 00 0707(XWC) Self-Insured Retention Per Occurrence-Firefighter Class Codes,
6000 00 0121 Terrorism Risk Insurance Program Reauthorization Act Endorsement, California Mandatory Endorsements, if any.

3) Arch Insurance has not quoted yet. We will send you their quote or focused indication once it is received.

Subjectivities

Renewal is subject to the following:

- Confirmation of retention levels (Option A, B, C or D from quote sheet options on pg 6)
- Completed and signed ACORD application.

Coverage cannot be considered bound until a binder has been received.

Marketing Summary

The following carriers were approached on your behalf:

Coverage Type	Company	Comments
Excess Workers' Compensation	Safety National (Incumbent)	Quoted $302,134 Rate $0.488
	ACE Insurance Company	Declined - Minimum retention for Police & Firefighters in CA is $1.5M
	Arch Insurance Company	Pending
	Midwest Employers Casualty Co.	Declined Unable to compete

This proposal is for illustration purposes only. Please refer to the policy for actual terms/conditions.
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Named Insured

The following are named insureds on your policies:

City of Milpitas

Please verify the accuracy of each name on this list and update if needed.

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Coverage cannot be bound until a binder has been recei

Excess Workers' Compensation

	Current 2021 / 2022	Renewal 2022 / 2023
COMPANY: **AM BEST RATING**	Safety National Casualty Corporation A++: XV; Admitted	Safety National Casualty Corporation A++: XV; Admitted
STATE	CA	CA
MAX LIMIT OF INDEMNITY: **EMPLOYERS LIABILITY MAX LIMIT OF INDEMNITY**	$20,000,000 per occurrence $1,000,000 per occurrence $1,000,000 Aggregate	$20,000,000 per occurrence $1,000,000 per occurrence $1,000,000 Aggregate
SELF-INSURED RETENTION (SIR):	$750,000 All Others $1,000,000 Police and Fire (Wildland Firefighting)	$750,000 All Others $1,000,000 Police and Fire (Wildland Firefighting)
ANNUAL TOTAL PAYROLL:	$60,177,251	$61,912,645
RATE:	.4511	0.488
ANNUAL DEPOSIT PREMIUM: **MINIMUM PREMIUM**	$271,460 $244,314 (1 Year)	$302,134 $271,921 (1 Year)

Payrolls Are Subject to Audit

Additional Coverage May Include:

Waiver of Subrogation-Negligence Excluded for VTA
Voluntary Compensation Endorsement

This proposal is for illustration purposes only. Please refer to the policy for actual terms/conditions.
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Important Notices & Disclaimers

Disclaimer: This proposal presented is based upon the exposures to loss made known to the agency. Any changes in these exposures (i.e. new operations, new products, additional state of hire, etc.) need to be promptly reported to our agency in order that proper coverage(s) may be put in place.

The proposal contains only a general description of the coverage(s) and does not constitute a policy/ contract. This brief description of insurance coverage is being provided as an accommodation only and is not intended to cover or describe all policy terms. For more complete information on the scope and limits or coverage, please refer to the policy document.

The proposal includes, but is not limited to, the terms, exclusions and conditions listed. For complete policy information, including exclusions, limitations and conditions, refer to the policy document.

☐ Non-Admitted Carrier

Taxes: N/A

Fees: N/A

Minimum Earned Premium: N/A %

Early termination of coverage may result in a short rate penalty.

Higher Limits may be available upon request ▼ Premiums may be subject to audit

Premiums include Terrorism Coverage

This proposal is based upon the exposures to loss made known to the Agency. Any changes in these exposures (i.e., new operations, new products, additional states of hire, etc.) need to be promptly reported to us in order that proper coverage(s) may be put into place.

Please read your policy for specific details.

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A.M. Best Rating Summary

The Insurance Company(ies) Providing Coverage has(have) the following A.M. Best* Financial Rating:

Policy Type	Carrier	Rating	Admitted/Non-Admitted
Excess Workers' Compensation	Safety National Casualty Corporation	A++ XV	Admitted

***Rating Guide:** **A++ to C - Stability Rating-Highest to Lowest Rating**
XV to I - Assets/Surplus Rating-Largest to Smallest

General Rating:

These rating classifications reflect A.M. Best's opinion of the relative position of each company in comparison with others, based upon averages within the Property-Casualty insurance industry. They are reflective of overall company services and standing within the industry.

Rating Key:

Secure Ratings			**Vulnerable Ratings**				
A++, A+	Superior		B, B-	Fair		D	**Poor**
A, A-	Excellent		C++, C+	Marginal		E	**Under State Supervision**
B++, B+	**Very Good**		**C, C-**	**Weak**		**F**	**In Liquidation**

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Financial Size Category

The financial Size Category is an indication of the size of an Insurer and is based on reported Policyholders' surplus plus conditional or Technical Reserve Funds, such as mandatory securities valuation reserve, other investment and operating contingency funds and/or miscellaneous voluntary reserves in liabilities.

Financial Size	Category		
Class I	Up to		$1,000,000
Class II	$1,000,000	to	$2,000,000
Class III	$2,000,000	to	$5,000,000
Class IV	$5,000,000	to	$10,000,000
Class V	$10,000,000	to	$25,000,000
Class VI	$25,000,000	to	$50,000,000
Class VII	$50,000,000	to	$100,000,000
Class VIII	$100,000,000	to	$250,000,000
Class IX	$250,000,000	to	$500,000,000
Class X	$500,000,000	to	$750,000,000
Class XI	$750,000,000	to	$1,000,000,000
Class XII	$1,000,000,000	to	$1,250,000,000
Class XIII	$1,250,000,000	to	$1,500,000,000
Class XIV	$1,500,000,000	to	$2,000,000,000
Class XV	$2,000,000,000	or	More

The A.M. Best Guide is the guidebook the insurance industry uses to determine the financial stability of an insurance company. A copy of the Best's Guide report on the insurance companies quoted is available for your review.

While we strive to be certain that your insurance is placed with reputable, highly rated insurance companies, we have no way of guaranteeing the financial accuracy of the Best'' Guide or the financial stability of any insurance company.

For these reasons, we recommend that you take into account the financial stability of all the insurance companies prior to making your selection as to who will write your insurance.

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Coverage cannot be bound until a binder has been recei

Claims Reporting Guidelines

Make Brown & Brown, Inc. aware of any and all incidents *immediately* after they occur, whether it be an auto accident, a theft, slip & fall, even a minor incident that appears will have no future activity. Do not wait for a police report.

Gather as much concrete information as possible. For example, police reports, company incident reports, conversation logs, medicals and pictures - anything that may assist in the handling of your claim. Send this information either by mail, e-mail or fax to:

Brown & Brown Insurance Services of CA, Inc.
2401 E. Katella., Suite 550,
Anaheim, CA 92806
Katia Thomas
(714)221-1844
(714) 221-4196 fax

If you have any questions or incur any problems, please call our office and we will be glad to assist in any way we can.

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What is an Audit?

Policies which use fluctuating values as the exposure basis, i.e.: payroll or sales are subject to an audit. The company may visit your business to examine your records or ask you to complete a voluntary "mail in" audit. If at the time of the audit your exposures are different from what you estimated at the time your policy was written, you will receive a return premium credit or an additional premium billing.

If you subcontract any work, it is essential that the subcontractor provide you with a Certificate of Insurance indicating that insurance coverage is in place for General Liability, Workers Compensation, and Automobile Liability. If at the time of audit you do not have evidence of insurance from your subcontractors, you will be charged an additional premium for the payroll of the subcontractor on your policies. We recommend you require subcontractors to carry insurance via a contract.

Audits that generate an additional premium are due upon receipt. It is important that you review audits as soon as you receive them and advise us of any discrepancies in the exposures immediately so that we may inform the insurance carrier. If payment of the audit is not received by the insurance company on a timely basis, your coverage may be canceled and could adversely affect the future placement of insurance coverage.

We recommend that you review the actual exposures as compared to your estimated exposures quarterly and advise us of any significant variance.

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Compensation Information

Compensation. In addition to the commissions or fees received by us for assistance with the placement, servicing, claims handling, or renewal of your insurance coverages, other parties, such as excess and surplus lines brokers, wholesale brokers, reinsurance intermediaries, underwriting managers and similar parties, some of which may be owned in whole or in part by Brown & Brown, Inc., may also receive compensation for their role in providing insurance products or services to you pursuant to their separate contracts with insurance or reinsurance carriers. That compensation is derived from your premium payments. Additionally, it is possible that we, or our corporate parents or affiliates, may receive contingent payments or allowances from insurers based on factors which are not client-specific, such as the performance and/or size of an overall book of business produced with an insurer. We generally do not know if such a contingent payment will be made by a particular insurer, or the amount of any such contingent payments, until the underwriting year is closed. That compensation is partially derived from your premium dollars, after being combined (or "pooled") with the premium dollars of other insureds that have purchased similar types of coverage. We may also receive invitations to programs sponsored and paid for by insurance carriers to inform brokers regarding their products and services, including possible participation in company-sponsored events such as trips, seminars, and advisory council meetings, based upon the total volume of business placed with the carrier you select. We may, on occasion, receive loans or credit from insurance companies. Additionally, in the ordinary course of our business, we may receive and retain interest on premiums you pay from the date we receive them until the date of premiums are remitted to the insurance company or intermediary. In the event that we assist with placement and other details of arranging for the financing of your insurance premium, we may also receive a fee from the premium finance company.

If an intermediary is utilized in the placement of coverage, the intermediary may or may not be owned in whole or part by Brown & Brown, Inc. or its subsidiaries. Brown & Brown entities operate independently and are not required to utilize other companies owned by Brown & Brown, Inc., but routinely do so. In addition to providing access to the insurance company, the Wholesale Insurance Broker/Managing General Agent may provide additional services including, but not limited to: underwriting; loss control; risk placement; coverage review; claims coordination with insurance company; and policy issuance. Compensation paid for those services is derived from your premium payment, which may on average be 15% of the premium you pay for coverage, and may include additional fees charged by the intermediary.

Questions and Information Requests: Should you have any questions, or require additional information, please contact this office at 1-800-228-7975 or, if you prefer, submit your question or request online at http://www.bbinsurance.com/customerinquiry/

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Brown & Brown Insurance Services of California Spectrum of Services

Brown & Brown Insurance Services of California is happy to offer all clients a full suite of service not only for your business but also for your personal insurance needs. Spectrum Service provides protection in the following areas:

Yes ☐ **No** ☐

Employee Benefits

Medical, dental, vision, life and disability for your employees

Yes ☐ **No** ☐

Personal

Homeowners, auto, collectibles and more

Yes ☐ **No** ☐

Contingency Planning

Life/Disability/Long Term Care

Yes ☐ **No** ☐

Business Perpetuation

Buy-Sell/Key Man

Yes ☐ **No** ☐

Financial Planning

Estate/Asset Protection • Retirement/Investment Planning

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CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Approve and Authorize the City Manager to Enter into a Side Letter to Amend the Memorandum of Understanding between the City and LIUNA/UPEC Local 792, representing the Milpitas Employees Association (MEA) Unit, Mid-Management-Confidential Unit (Mid-Con), and the Professional and Technical Unit (ProTech) and to Approve and Authorize the City Manager to Enter into three Master Professional Services Agreements for On-Call Temporary Staffing Services (Staff Contact: Jeannine Seher, Human Resources Director, 408-586-3086)**
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	6/14/2022
	Recommendation: Approve and authorize the City Manager to enter into a Side Letter to amend the Memorandum of Understanding between the City and LIUNA/UPEC Local 792, representing the Milpitas Employees Association (MEA) Unit, Mid-Management-Confidential Unit (Mid-Con), and the Professional and Technical Unit (ProTech) and to approve and authorize the City Manager to enter into three four-year Master Professional Services Agreements for On-Call Temporary Staffing Services, with a Not to Exceed annual amount of $500,000 for each agreement.

Background:

Government Code 3500 et. al. requires the City to meet and confer in good faith over wages, hours, terms, and conditions of employment. This requirement extends to circumstances when the City has a need to contract out bargaining unit work, which may occur occasionally, to augment staffing - during times of recruitment for vacancies, staff absences due to illness or injury, in times of peak workloads or unanticipated increases in work volume. Historically, when a departmental need arises for temporary staffing services, the City has had to meet and confer on each circumstance, which is inefficient.

In order to streamline the process, on December 13, 2021 the City issued Request for Proposal (RFP) 22-044 for On-Call Temporary Personnel Services with the stated intent of contracting with one or more vendors to provide temporary staffing services. A total of 933 companies viewed the RFP, 44 downloaded the RFP and 24 companies submitted a response. The proposals were evaluated by a 3-member panel composed of representatives from Human Resources, Recreation and Community Services, and , Economic Development. The evaluation criteria included Qualification of the Firm, Staffing and Project Organization, Work Plan / Project Understanding, and the Cost Proposal. The City received twenty (24) submissions, of which four (4) were disqualified.. Staff completed an extensive evaluation process in order to score and ultimately select the top three (3) agencies. The final scores are as follows.

Company Name	Tryfacta, Inc	Infojini, Inc.	Cynet Systems, Inc.
Score	86.33	85.67	83.33

In an effort to reach an agreement on the parameters of such contract(s), the City provided an opportunity to meet and confer, and where the parties were successful in reaching an agreement, side letters of agreement have been drafted.

Analysis:

The City provided an opportunity to meet and confer to the International Association of Firefighters (IAFF) and to three bargaining groups represented by LIUNA, UPEC, 792. The City and the IAFF did not reach an agreement.

The City and the three bargaining groups represented by LIUNA, UPEC 792 (MEA, MidCon and ProTech), met 6 times and exchanged proposals in an attempt to reach an agreement. The side letters reflect the discussions and agreement reached between the parties.

The City will enter into a four-year Master Professional Services Agreement, not to exceed $500,000 annually, with each of the following three (3) agencies:

1. Tryfacta, Inc.
2. Infojini, Inc.
3. Cynet Systems, Inc.

The benefit to this approach is that it will allow the City to enter into agreement with the staffing agencies without having to encumber additional funds. In order to utilize temporary staffing services, Departments will reallocate funds from their existing budgets or seek Council authority for additional funding at the time of need. Staff would like to make clear that the City is not seeking additional funding at this time, merely the ability to use already allocated funds from the budget in a potentially different way should needs arise to augment staffing during times of recruitment for vacancies, staff absences due to illness or injury, in times of peak workloads or unanticipated increases in work volume.

Policy Alternative:

Alternative: Maintain the status quo.

Pros: The City will save time on entering into three Master Professional Services Agreements.

Cons: Absent the adoption of the agreements, the City will be required to meet and confer when needs arise for temporary staffing services on an individual basis, which is ineffective and inefficient.

Reason for Not Recommending: The City has engaged in a good faith meet and confer process over the ability to contract out bargaining unit work and agreement has been reached with three of the four affected bargaining groups.

Fiscal Impact:
The City is not requesting additional funding as costs will be absorbed in departmental budgets by reallocating existing funds towards on-call Temporary Staffing Services should needs arise to augment staffing during times of recruitment for vacancies, staff absences due to illness or injury, in times of peak workloads or unanticipated increases in work volume.

California Environmental Quality Act:
Approval of the recommendation is not an activity defined as a “project” under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines 15061(b) (3) and 15378(b)(4) either because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment and/or because the action is financial and/or administrative and does not directly impact the environment.

Recommendation:
Approve and authorize the City Manager to enter into a Side Letter to amend the Memorandum of Understanding between the City and LIUNA/UPEC Local 792, representing the Milpitas Employees Association (MEA) Unit, Mid-Management-Confidential Unit (Mid-Con), and the Professional and Technical Unit (ProTech) and to

approve and authorize the City Manager to enter into three four-year Master Professional Services Agreements for On-Call Temporary Staffing Services, with a Not to Exceed annual amount of $500,000 for each agreement.

Attachment:

1. Side Letter to MOU with MEA Unit, LIUNA/UPEC (792)
2. Side Letter to MOU with Mid-Con Unit, LIUNA/UPEC (792)
3. Side Letter to MOU with Pro-Tech Unit, LIUNA/UPEC (792)
4. Temporary Staffing Services Proposal Packet from Tryfacta, Inc.
5. Temporary Staffing Services Proposal Packet from Infojini, Inc.
6. Temporary Staffing Services Proposal Packet from Cynet Systems, Inc.

SIDE LETTER OF AGREEMENT
between
City of Milpitas and LIUNA-UPEC 792/MEA

The City issued a Request for Proposal with the stated intent of contracting with one or more vendors to provide temporary staffing services to augment staffing during times of recruitment for vacancies, staff absences due to illness or injury, in times of peak workloads, or unanticipated increases in work volume. In an effort to reach an agreement on the parameters of such a contract, the parties have an interest in entering into a side letter agreement.

This Side Letter of Agreement is entered into by and between the City of Milpitas ("City") and the LIUNA-UPEC 792/MEA ("Union"), collectively known as "The Parties." For purposes of this side letter agreement, a "Vendor" is the firm selected to provide temporary staffing services. An employee who works for the vendor to provide such temporary services is referred to as a Temporary Employee. Subject to the City of Milpitas City Council approval, the Parties agree to the following terms and conditions outside of the MOU:

The City shall enter into a contract with vendor(s) subject to the following parameters:

1. The list of classifications the City may fill with a temporary employee from a contract vendor shall be limited to those identified in the RFP. Should the City wish to expand the list of classifications, it shall notify the Union and provide the opportunity to meet and confer.
2. The vendor(s) selected as a result of the Temporary Services RFP shall not be used to provide staff to permanently replace regular budgeted City positions. Should the City wish to outsource a function, it shall notify the Union and provide the opportunity to meet and confer, as required by law.
3. Temporary work provided by vendor temporary employees through this agreement shall be limited as follows:
    a. Peak Workload Periods: If hired to augment staff for "peak" workload periods, the position shall be limited to a total of 720 hours per calendar year.
    b. Active Recruitment: If hired to backfill behind a staff vacancy, the position shall be limited to 959 hours per calendar year.
    c. Employee Absence: If hired to backfill behind an employee's long-term absence, no more than the length of such absence. A position being contracted shall not be allowed to exceed 959 hours without the prior authorization of the Human Resources Director and the Union.
    d. Projects: If hired to complete a special project, the time is limited to the duration to complete the project, and not to exceed 959 hours per calendar year.
4. The City agrees to provide invoices monthly to the Union showing the hours worked by temporary employees in a manner agreed upon as a result of the contract with the City.
    a. The information provided to the Union shall include:
        i. The total year-to-date hours worked by each contracted employee.
        ii. The employee's hourly pay rate.

iii. The hourly bill rate to the City.

5. Prior to any workload being given to a temporary contracted employee, when possible, the workload shall be first offered to bargaining unit employees in the appropriate classifications, including via overtime opportunities, out-of-class assignment, and/or special assignment (MEA), if it is feasible based on department needs. Employees shall not be obligated to accept out-of-class or special assignments.
6. Whenever a bargaining unit position is contracted through a temp agency pursuant to this agreement, The City shall notify LIUNA representatives of the decision to contract work via this agreement and include the following information:
   a. The date the temporary employee started.
   b. The scope of the work being contracted out.
   c. The reason for contracting the work (Peak workload, active recruitment, employee absence, or special project).
   d. The expected duration of the work.
7. The City shall issue LIUNA representatives a monthly "vacancy report" Following this monthly report, the City shall agree to meet with the Union upon request to discuss concerns stemming from the report.
8. The City recognizes the value of employees being gathered in the workplace to conduct City business but also understands the desire to have increased flexibility by providing teleworking options. The City does not expect to have temporary vendor staff working remotely for a significant portion or all of the workweek on a frequent basis. The City will notify the union when a temporary contract employee is teleworking a majority of the workweek. The City agrees to meet with the Union upon request to discuss any concerns.

For the City:

Jeannine M. Seher Human Resources Director	Date
Steven McHarris City Manager	Date

For the Union:

Ryan S. Heron Ryan Heron Union Representative, LIUNA	5/17/2022 Date
Robert De Long Robert DeLong MEA President	5/17/2022 Date

SIDE LETTER OF AGREEMENT
between
City of Milpitas and LIUNA-UPEC 792/MidCon

The City issued a Request for Proposal with the stated intent of contracting with one or more vendors to provide temporary staffing services to augment staffing during times of recruitment for vacancies, staff absences due to illness or injury, in times of peak workloads, or unanticipated increases in work volume. In an effort to reach an agreement on the parameters of such a contract, the parties have an interest in entering into a side letter agreement.

This Side Letter of Agreement is entered into by and between the City of Milpitas ("City") and the City of Milpitas and LIUNA-UPEC 792/MidCon ("Union"), collectively known as "The Parties." For purposes of this side letter agreement, a "Vendor" is the firm selected to provide temporary staffing services. An employee who works for the vendor to provide such temporary services is referred to as a Temporary Employee. Subject to the City of Milpitas City Council approval, the Parties agree to the following terms and conditions outside of the MOU:

The City shall enter into a contract with vendor(s) subject to the following parameters:

1. The list of classifications the City may fill with a temporary employee from a contract vendor shall be limited to those identified in the RFP. Should the City wish to expand the list of classifications, it shall notify the Union and provide the opportunity to meet and confer.
2. The vendor(s) selected as a result of the Temporary Services RFP shall not be used to provide staff to permanently replace regular budgeted City positions. Should the City wish to outsource a function, it shall notify the Union and provide the opportunity to meet and confer, as required by law.
3. Temporary work provided by vendor temporary employees through this agreement shall be limited as follows:
    a. Peak Workload Periods: If hired to augment staff for "peak" workload periods, the position shall be limited to a total of 720 hours per calendar year.
    b. Active Recruitment: If hired to backfill behind a staff vacancy, the position shall be limited to 959 hours per calendar year.
    c. Employee Absence: If hired to backfill behind an employee's long-term absence, no more than the length of such absence. A position being contracted shall not be allowed to exceed 959 hours without the prior authorization of the Human Resources Director and the Union.
    d. Projects: If hired to complete a special project, the time is limited to the duration to complete the project, and not to exceed 959 hours per calendar year.
4. The City agrees to provide invoices monthly to the Union showing the hours worked by temporary employees in a manner agreed upon as a result of the contract with the City.
    a. The information provided to the Union shall include:
        i. The total year-to-date hours worked by each contracted employee.
        ii. The employee's hourly pay rate.

iii. The hourly bill rate to the City.

5. Prior to any workload being given to a temporary contracted employee, when possible, the workload shall be first offered to bargaining unit employees in the appropriate classifications, including via overtime opportunities, out-of-class assignment, and/or special assignment, if it is feasible based on department needs. Employees shall not be obligated to accept out-of-class or special assignments.
6. Whenever a bargaining unit position is contracted through a temp agency pursuant to this agreement, The City shall notify LIUNA representatives of the decision to contract work via this agreement and include the following information:
   a. The date the temporary employee started.
   b. The scope of the work being contracted out.
   c. The reason for contracting the work (Peak workload, active recruitment, employee absence, or special project).
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8. The City recognizes the value of employees being gathered in the workplace to conduct City business but also understands the desire to have increased flexibility by providing teleworking options. The City does not expect to have temporary vendor staff working remotely for a significant portion or all of the workweek on a frequent basis. The City will notify the union when a temporary contract employee is teleworking a majority of the workweek. The City agrees to meet with the Union upon request to discuss any concerns.

For the City:

Jeannine M. Seher Human Resources Director	Date
Steven McHarris City Manager	Date

For the Union:

Ryan Heron Union Representative, LIUNA	Date
Toni-Lynn Charlop MidCon President	05/24/22 Date

SIDE LETTER OF AGREEMENT
between
City of Milpitas and LIUNA-UPEC 792/Pro-Tech

The City issued a Request for Proposal with the stated intent of contracting with one or more vendors to provide temporary staffing services to augment staffing during times of recruitment for vacancies, staff absences due to illness or injury, in times of peak workloads, or unanticipated increases in work volume. In an effort to reach an agreement on the parameters of such a contract, the parties have an interest in entering into a side letter agreement.

This Side Letter of Agreement is entered into by and between the City of Milpitas ("City") and the LIUNA-UPEC 792/Pro-Tech ("Union") collectively known as "The Parties." For purposes of this side letter agreement, a "Vendor" is the firm selected to provide temporary staffing services. An employee who works for the vendor to provide such temporary services is referred to as a Temporary Employee. Subject to the City of Milpitas City Council approval, the Parties agree to the following terms and conditions outside of the MOU:

The City shall enter into a contract with vendor(s) subject to the following parameters:

1. The list of classifications the City may fill with a temporary employee from a contract vendor shall be limited to those identified in the RFP. Should the City wish to expand the list of classifications, it shall notify the Union and provide the opportunity to meet and confer.
2. The vendor(s) selected as a result of the Temporary Services RFP shall not be used to provide staff to permanently replace regular budgeted City positions. Should the City wish to outsource a function, it shall notify the Union and provide the opportunity to meet and confer, as required by law.
3. Temporary work provided by vendor temporary employees through this agreement shall be limited as follows:
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    d. Projects: If hired to complete a special project, the time is limited to the duration to complete the project, and not to exceed 959 hours per calendar year.
4. The City agrees to provide invoices monthly to the Union showing the hours worked by temporary employees in a manner agreed upon as a result of the contract with the City.
    a. The information provided to the Union shall include:
        i. The total year-to-date hours worked by each contracted employee.
        ii. The employee's hourly pay rate.

iii. The hourly bill rate to the City.

5. Prior to any workload being given to a temporary contracted employee, when possible, the workload shall be first offered to bargaining unit employees in the appropriate classifications, including via overtime opportunities, out-of-class assignment, and/or special assignment, if it is feasible based on department needs. Employees shall not be obligated to accept out-of-class or special assignments.
6. Whenever a bargaining unit position is contracted through a temp agency pursuant to this agreement, The City shall notify LIUNA representatives of the decision to contract work via this agreement and include the following information:
   a. The date the temporary employee started.
   b. The scope of the work being contracted out.
   c. The reason for contracting the work (Peak workload, active recruitment, employee absence, or special project).
   d. The expected duration of the work.
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For the City:

Jeannine M. Seher Human Resources Director	Date
Steven McHarris City Manager	Date

For the Union:

Ryan S. Heron Ryan Heron Union Representative, LIUNA	5/16/2022 Date
Avery Stark Avery Stark ProTech President	05-16-2022 Date

MASTER SERVICES AGREEMENT
BETWEEN THE
CITY OF MILPITAS AND TRYFACTA INC

This Agreement is made and entered into as of _____ ("Effective Date") by and between the City of Milpitas, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 ("City"), and **Tryfacta, Inc.** a California corporation with its principal place of business at **4637 Chabot Drive, suite 100, Pleasanton, CA 94588** (hereinafter referred to as "Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

RECITALS

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

On-Call Temporary Personnel Services
(hereinafter referred to as "the Project").

B. Contractor submitted its qualifications to City to provide **On-Call Temporary Personnel Services** on an as-needed basis and is one of several Contractors selected by City to provide services

C. Contractor is duly licensed and has the necessary qualifications to provide such services.

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

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services.

Contractor shall provide the City with the services described in the Scope of Services attached hereto as Exhibit A. City will notify Contractor when it needs services that it believes Contractor is qualified to provide. Nothing herein obligates City to notify Contractor about every temporary staffing need. City reserves the right to solicit the services described in Exhibit A from any provider or no provider at all.

2. Compensation.

a. Subject to paragraph 2(b) below, the City shall pay for such services in accordance with the rates set forth in the Schedule of Charges set forth in Exhibit B. Each month, Contractor shall furnish to the City a statement of the work performed for compensation during the preceding month. All work is subject to City review and approval prior to payment.

b. In no event shall the total amount paid for services rendered by Contractor under this Agreement exceed the sum of **Five Hundred Thousand Dollars and Zero Cents ($500,000.000)**. This amount is to cover all printing and related costs, and the City will not pay any additional fees for printing expenses. Periodic payments shall be made within thirty (30) days of receipt of an invoice which includes a detailed

description of the work performed. Payments to Contractor for work performed will be made on a monthly billing basis.

3. Additional Work.

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

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred and services provided shall be maintained by Contractor and made available at all reasonable times during the Agreement term and for three (3) years from the date of final payment under the Agreement for inspection by City.

5. Term.

The term of this Agreement shall be from **July 1, 2022** to **June 30, 2026**, unless earlier terminated as provided herein. The City reserves the right to review the Contractor's performance at the end of each year and cancel all or part of the Agreement.

6. Delays in Performance.

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

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

7. Compliance with Law.

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

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

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

8. Standard of Care

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

9. Assignment and Sub-Contractor

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

10. Independent Contractor

Contractor is retained as an independent contractor and is not an employee of City. No employee or agent of Contractor shall become an employee of City, except as set forth in Exhibit A section 1.l.. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided.

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

12. Indemnification.

a. To the fullest extent permitted by law, Contractor 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 Contractor, its officials, officers, employees, subcontractors, Contractors or agents in connection with the performance of the Contractor'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. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Contractor, the City, its officials, officers, employees, agents, or volunteers.

b. 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 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, Contractor's liability for such claim, including the cost to defend, shall not exceed the Contractor's proportionate percentage of fault.

13. California Labor Code Requirements.

a. Contractor is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage

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

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

c. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Contractor's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of services, 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 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.

14. Verification of Employment Eligibility.

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

15. Laws and Venue.

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

16. Termination or Abandonment

a. City has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Contractor. City shall pay Contractor the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by City and Contractor of the portion of such task completed but not paid prior to said termination. City shall not be liable for any costs other than the charges or portions thereof

which are specified herein. Contractor shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work. If City experiences performance issues with the selected candidate and terminates the temporary employee, the Contractor will provide a replacement employee to City, also at no additional charge.

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

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

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

18. Organization

Contractor shall assign **Arman Dhar** as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

19. Limitation of Agreement.

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

20. Notice

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

CITY:	CONTRACTOR:
City of Milpitas	Tryfacta, Inc.
455 E. Calaveras Boulevard	4637 Chabot Drive, suite 100
Milpitas, California 95035	Pleasanton, CA 94588
Attn: Jeannine Seher, Human Resources Director	Attn: Arman Dhar

and shall be effective upon receipt thereof.

21. Third Party Rights

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

22. Equal Opportunity Employment.

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

23. Entire Agreement

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

24. Severability

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

25. Successors and Assigns

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

26. Non-Waiver

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

27. Time of Essence

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

28. City's Right to Employ Other Contractors

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

29. Prohibited Interests

Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement,

no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

30. Wage Theft Prevention

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

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

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

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

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

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

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF MILPITAS AND TRYFACTA INC

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

CITY OF MILPITAS

Approved By:

_____
Steven G. McHarris, City Manager

_____
Date

Approved As To Form:

_____
Michael Mutalipassi, City Attorney

Approved:

_____
Lauren Lai, CPA, MPA
Finance Director / Risk Manager

Approved As To Content:

_____
Jeannine Seher, Human Resources Director

TRYFACTA INC

_____
Signature

_____
Name

_____
Title

_____
Date

EXHIBIT A

Scope of Services

The scope of services described herein is the minimum necessary to meet the City's objectives. The shall be able to provide **some or all** services as laid out below in this scope of services and provide personnel who are competent and capable of performing the necessary tasks generally associated with the job classification types specified in **Exhibit B- City Job Classification Table**.

The Contractor is expected to expand on the scope by incorporating their expertise and proposed method of approach.

SCOPE OF SERVICES

1. The scope of services by the Contractor shall include, but is not limited to:

a. Providing temporary staffing for administrative, clerical, and technical categories.

b. The ability to provide a pool of personnel sufficient to meet the CITY's temporary staffing needs with a minimum notice of **forty-eight hours**.

c. Comparing job requirements with worker qualifications and submitting resumes of temporary staff as requested.

d. Conducting background and reference checks, and drug screening of personnel, at no additional cost to the City.

e. Ensuring temporary staff have been vaccinated for COVID-19, annually or as otherwise required by the City.

f. Identifying prior CalPERS membership of all temporary staff to be assigned to the City to assist in ensuring the City adheres to CalPERS enrollment guidelines. If temporary staff has prior CalPERS membership, identify the number of hour previously worked in the fiscal year (July 1 - June 30).

g. Administering and maintaining all employment and payroll records, payroll processing, and payment of payroll checks and taxes, including the deductions required by state, federal and local laws such as social security and withholding taxes for personnel employed by Contractor.

h. Making all unemployment compensation contributions to Contractor's employee(s) as required by federal and state law and process claims.

i. Covering all costs related to Consultant's employee(s) responsibilities for workers' compensation coverage required by federal and state law and process claims.

j. Arranging for the CITY, if requested by CITY staff, to meet with the temporary staffing candidate, at the Contractor's expense, for a period of up to one (1) hour. *The City would like the option for the department to be able to interview an employee prior to placement to ensure a good fit. The Contractor agrees to compensate the employee for an hour of their time for this purpose. The one-hour therefore, is for the purposes of holding an interviewing, not a response time for the vendor to find the placement.*

k. If staff have inadequate performance or other performance or behavioral issues, Contractor must be able to provide for a replacement within 24 - 48 hours.

l. Contractor will allow City the option of converting temporary employees to permanent hires after 90 days of employment, at no cost to City.

m. Services will be initiated utilizing **Exhibit E- Task Order Form.**

n. The City requires that billing be made for each requesting department designated on the Task Order Form. Invoices will reflect the task order numbers being billed for each requesting department.

2. Provide Cost Proposal for temporary staffing services for a **four (4) year** contract period to perform the above mentioned services on an as-needed and intermittent basis.

a. Identify Contractor's classification or position titles that Contractor is able to fill to meet the City classification needs as identified in **Exhibit B- City Job Classification Table.**

b. All expenses shall be included in the proposed hourly billing rate, and shall include the hourly wage paid to an assigned personnel and the Contractor's overhead, but shall not include reimbursements for travel costs or travel time.

CONTRACTOR RESPONSIBILITIES

1. **Work Order Process**: Contractor will only accept work orders for temporary personnel from the designated City of Milpitas (COM) HR Department employee.

2. **Minimum Qualification Review:** Contractor must screen and test all personnel referred to COM for temporary assignments, pursuant to COM's test criteria and pre-employment standards, before placement is made.

3. **Recruitment Search, Advertising, Networking, Screening**: Contractor will identify three to five candidates from their own network, within one business day of the request, to be interviewed by a COM hiring manager. Contractor will pay for any necessary advertising and marketing to procure finalists. Contractor will ensure availability and interests of candidates, and review credentials of each applicant based on resume, referral sources, and telephone interviews. Contractor will require that all candidates complete a background check which includes education, work and criminal history and ensure that candidates are fingerprinted, at Contractor's cost, prior to their start date with COM. The City will have the final say as to the suitability of the candidate with respect to their background clearance.

4. **Final Reference Checks:** Contractor will complete a detailed reference check of each of the finalist candidates. A minimum of three references must be checked for each finalist, one of which must have had a supervisory relationship to the employee.

5. **Timecards:** Contractor must submit timecards to COM on a weekly basis for approval. Contractor must provide computerized billings on a monthly basis. A copy of the approved timecards must be submitted with the monthly billing. Billing must specify employee name, hours worked and department.

6. **Termination of Candidate's Employment:** : If COM experiences performance issues with the selected candidate and terminates the temporary employee, the Contractor will provide a replacement employee to COM, also at no additional charge.

7. **Status Reports:** Contractor will provide COM with status reports on a monthly (or other agreed upon) basis, in a format approved by COM. Status reports must include the date the request was made; the date of placement; length of placement; cost of placement; job title of placement; hourly billing rate paid; department where placement was made and the name of the requestor.

8. **Optional Permanent Hiring of Temporary Employees**: There shall be no restrictions on the City or penalties or fees imposed by the proposer, should a temporary employee be hired to City employment.

CITY RESPONSIBILITIES

The City will assign a Project Director, or designee who will coordinate City activities with the activities of the Contractor. All contracts within the City must be arranged through the Project Director, or designee.

The City will provide access to position classification descriptions as found on the City website, as needed by the Proposer to determine the requirements for the position. Refer to **Exhibit B- City Job Classification Table** for the job classifications that are part of this solicitation.

The City will determine the hourly base pay rates for each placement.

EXHIBIT B

Schedule of Charges/Payments

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

Breakdown of Cost

Contractor. is committed to provide on-call temporary personnel services for the position defined in the City Job Classification Table-Exhibit A for RFP- 22-044. Please see below the breakdown of cost mark-up, which shall be used to meet City of Milpitas, CA 95035-5411 needs for tasks outlined in the RFP- 22-044.

Breakdown of Cost	**Percentage**
Statutory Expenses	
Payroll Taxes	14.00%
Operating Expenses	
Administrative Fees	5.00%
Worker Compensation Insurance	2.00%
Recruitment Fees	5.00%
Miscellaneous Fees	4.00%
Profit Mark-up	5.00%
Total	**35.00%**

[CITY JOB CLASSIFCATION TABLE ON FOLLOWING PAGE]

Exhibit A: The City is looking for Contractor(s) who can, at a minimum, provide services comparable to a majority of the following City Classifications. Please check City's website for full class descriptions. If Contractor does not have workers who can provide comparable services, please indicate with an N/A. For each of the years, please identify hourly rates for each Job Title.
Column #7 - Percent Increase - Should reflect the **Total Percentage** increase over the life of the contract (years 1 through 4).
Overtime rate will be 1 ½ times the hourly rate. Weekend and Holiday rate will be 2 times the hourly rate.

City Job Title	Contractor's Comparable Job Title	Hourly Rate Year 1	Hourly Rate Year 2	Hourly Rate Year 3	Hourly Rate Year 4	Percent Increase in hourly rate from Year 1 to Year 4
Administrative Analyst I	Administrative Analyst I	$38.94	$41.67	$44.58	$47.70	22.50%
Administrative Analyst II	Administrative Analyst II	$45.89	$49.10	$52.54	$56.22	22.50%
Administrative Assistant	Administrative Assistant	$38.94	$41.67	$44.58	$47.70	22.50%
Assistant Civil Engineer	Assistant Civil Engineer	$58.41	$62.50	$66.87	$71.55	22.50%
Associate Engineer	Associate Engineer	$84.38	$90.29	$96.61	$103.37	22.50%
Budget Manager	Budget Manager	$97.36	$104.18	$111.47	$119.27	22.50%
Building Inspector	Building Inspector	$77.88	$83.33	$89.16	$95.41	22.50%
Building Permit Technician	Building Permit Technician	$55.17	$59.03	$63.16	$67.59	22.50%
Buyer	Buyer	$48.68	$52.09	$55.73	$59.64	22.50%
Customer Services Supervisor	Customer Services Supervisor	$55.17	$59.03	$63.16	$67.59	22.50%
Engineering Aide	Engineering Aide	$42.19	$45.14	$48.30	$51.68	22.50%
Engineering Permit Technician	Engineering Permit Technician	$51.92	$55.55	$59.44	$63.60	22.50%
Executive Assistant	Executive Assistant	$48.68	$52.09	$55.73	$59.64	22.50%
Finance Manager	Finance Manager	$90.87	$97.23	$104.04	$111.32	22.50%
Financial Analyst I	Financial Analyst I	$48.68	$52.09	$55.73	$59.64	22.50%
Financial Analyst II	Financial Analyst II	$55.17	$59.03	$63.16	$67.59	22.50%
Fire Inspector	Fire Inspector	$55.17	$59.03	$63.16	$67.59	22.50%
Human Resources Analyst I	Human Resources Analyst I	$45.43	$48.61	$52.01	$55.65	22.50%
Human Resources Analyst II	Human Resources Analyst II	$51.92	$55.55	$59.44	$63.60	22.50%
Human Resources Assistant	Human Resources Assistant	$35.70	$38.20	$40.87	$43.73	22.50%
Human Resources Technician	Human Resources Technician	$36.45	$39.00	$41.73	$44.65	22.50%
Information Services Analyst	Information Services Analyst	$64.90	$69.44	$74.30	$79.51	22.50%
Junior Accountant	Junior Accountant	$47.25	$50.56	$54.10	$57.88	22.50%
Junior Civil Engineer	Junior Civil Engineer	$46.73	$50.00	$53.50	$57.25	22.50%
Maintenance Custodian I	Maintenance Custodian I	$33.75	$36.11	$38.64	$41.35	22.50%
Maintenance Custodian II	Maintenance Custodian II	$38.94	$41.67	$44.58	$47.70	22.50%
Maintenance Worker I	Maintenance Worker I	$32.40	$34.67	$37.09	$39.69	22.50%
Maintenance Worker II	Maintenance Worker II	$39.23	$41.98	$44.91	$48.06	22.50%
Meter Reader	Meter Reader	$38.94	$41.67	$44.58	$47.70	22.50%

Office Assistant I	Office Assistant I	$32.40	$34.67	$37.09	$39.69	22.50%
Office Assistant II	Office Assistant II	$36.35	$38.89	$41.62	$44.53	22.50%
Office Specialist	Office Specialist	$44.55	$47.67	$51.01	$54.58	22.50%
Payroll Specialist	Payroll Specialist	$40.50	$43.34	$46.37	$49.61	22.50%
Plan Checker	Plan Checker	$73.44	$78.58	$84.08	$89.97	22.50%
Principal Engineer	Principal Engineer	$97.36	$104.18	$111.47	$119.27	22.50%
Public Services Assistant I	Public Services Assistant I	$35.70	$38.20	$40.87	$43.73	22.50%
Public Services Assistant II	Public Services Assistant II	$43.20	$46.22	$49.46	$52.92	22.50%
Purchasing Agent	Purchasing Agent	$38.94	$41.67	$44.58	$47.70	22.50%
Senior Accountant	Senior Accountant	$64.90	$69.44	$74.30	$79.51	22.50%
Senior Accounting Technician	Senior Accounting Technician	$45.43	$48.61	$52.01	$55.65	22.50%
Senior Administrative Analyst	Senior Administrative Analyst	$54.00	$57.78	$61.82	$66.15	22.50%
Senior HR Analyst	Senior HR Analyst	$58.41	$62.50	$66.87	$71.55	22.50%
Sr. Information Analyst/Dev	Sr. Information Analyst/Dev	$77.88	$83.33	$89.16	$95.41	22.50%
Sr. Project Manager	Sr. Project Manager	$148.50	$158.90	$170.02	$181.92	22.50%
Sr. Public Services Assistant	Sr. Public Services Assistant	$55.17	$59.03	$63.16	$67.59	22.50%
Staff Assistant	Staff Assistant	$37.80	$40.45	$43.28	$46.31	22.50%

EXHIBIT C

Activity Schedule

[RESERVED]

EXHIBIT D

INSURANCE REQUIREMENTS

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

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

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

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

Commercial General Liability (CGL):

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

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

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

Automobile Liability:

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

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

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

Professional Liability (Errors and Omissions):

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

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

___ Insurance appropriates to the Contractor or Contractor's profession, with limit no less than _____ per occurrence or claim, _____ aggregate

Workers' Compensation Insurance:

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

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

Builder's Risk (Course of Construction):

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

Contractor's or Contractor's Pollution Legal Liability:

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

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

Cyber Liability Insurance

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

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

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

Surety Bonds:

Contractor shall provide the following Surety Bonds:

____ Bid Bond
____ Performance Bond
____ Payment Bond

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

Other Insurance Provisions:

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

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

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

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain

a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

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

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

_X__ Notice of Cancellation, Suspension or Otherwise Voiding Policies:

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

_X__ Waiver of Subrogation:

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

___ Completed Operations

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

<u>THE FOLLOWING PROVISIONS APPLY TO ALL AGREEMENTS</u>

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

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

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

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

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

Acceptability of Insurers:

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

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

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

Subcontractors:

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

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

Verification of Coverage:

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

Special Risks or Circumstances

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

Failure to Comply:

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

Applicability of Coverage:

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

Exhibit E

[TASK ORDER FORM ON FOLLOWING PAGE]

TASK ORDER

The Contractor hereby agrees to perform the Services authorized herein in accordance with all the terms and conditions of the Contract. The Contractor shall furnish the necessary professional and technical personnel and materials required to complete this work.

Task Order No. _____ (HR to provide)

Contractor: _____ Requesting Department: _____

Term: Effective:___/_____/_____and continue in effect through ___/____/_____

Job Classification :_____

Shift Days: _____ **Shift Hours/Per Week: _____**

Shift Hours: _____

Hourly Rate to be Billed to the City: $_____

Funding Source

Fund: _____ Function: _____ Object Code: _____

Personnel: *attach Resume*

Approvals

Project Manager: _____ Department Head: _____

Executed by:

City of Milpitas ***Contractor Name***

_____ _____

Signature Date Signature Date

_____ _____

Printed Name & Title Printed Name & Title

MASTER SERVICES AGREEMENT
BETWEEN THE
CITY OF MILPITAS AND INFOJINI INC

This Agreement is made and entered into as of _____ ("Effective Date") by and between the City of Milpitas, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 ("City"), and **Infojini, Inc.** a California corporation with its principal place of business at **10015 Columbia Road, Suite 301, Columbia, MD 21046**(hereinafter referred to as "Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

RECITALS

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

On-Call Temporary Personnel Services
(hereinafter referred to as "the Project").

B. Contractor submitted its qualifications to City to provide **On-Call Temporary Personnel Services** on an as-needed basis and is one of several Contractors selected by City to provide services

C. Contractor is duly licensed and has the necessary qualifications to provide such services.

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

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services.

Contractor shall provide the City with the services described in the Scope of Services attached hereto as Exhibit A. City will notify Contractor when it needs services that it believes Contractor is qualified to provide. Nothing herein obligates City to notify Contractor about every temporary staffing need. City reserves the right to solicit the services described in Exhibit A from any provider or no provider at all.

2. Compensation.

a. Subject to paragraph 2(b) below, the City shall pay for such services in accordance with the rates set forth in the Schedule of Charges set forth in Exhibit B. Each month, Contractor shall furnish to the City a statement of the work performed for compensation during the preceding month. All work is subject to City review and approval prior to payment.

b. In no event shall the total amount paid for services rendered by Contractor under this Agreement exceed the sum of **Five Hundred Thousand Dollars and Zero Cents ($500,000.000)**. This amount is to cover all printing and related costs, and the City will not pay any additional fees for printing expenses. Periodic payments shall be made within thirty (30) days of receipt of an invoice which includes a detailed

description of the work performed. Payments to Contractor for work performed will be made on a monthly billing basis.

3. Additional Work.

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

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred and services provided shall be maintained by Contractor and made available at all reasonable times during the Agreement term and for three (3) years from the date of final payment under the Agreement for inspection by City.

5. Term.

The term of this Agreement shall be from **July 1, 2022** to **June 30, 2026**, unless earlier terminated as provided herein. The City reserves the right to review the Contractor's performance at the end of each year and cancel all or part of the Agreement.

6. Delays in Performance.

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

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

7. Compliance with Law.

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

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

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

8. Standard of Care

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

9. Assignment and Sub-Contractor

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

10. Independent Contractor

Contractor is retained as an independent contractor and is not an employee of City. No employee or agent of Contractor shall become an employee of City, except as set forth in Exhibit A section 1.l.. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided.

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

12. Indemnification.

a. To the fullest extent permitted by law, Contractor 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 Contractor, its officials, officers, employees, subcontractors, Contractors or agents in connection with the performance of the Contractor'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. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Contractor, the City, its officials, officers, employees, agents, or volunteers.

b. 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 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, Contractor's liability for such claim, including the cost to defend, shall not exceed the Contractor's proportionate percentage of fault.

13. California Labor Code Requirements.

a. Contractor is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage

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

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

c. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Contractor's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of services, 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 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.

14. Verification of Employment Eligibility.

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

15. Laws and Venue.

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

16. Termination or Abandonment

a. City has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Contractor. City shall pay Contractor the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by City and Contractor of the portion of such task completed but not paid prior to said termination. City shall not be liable for any costs other than the charges or portions thereof

which are specified herein. Contractor shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work. If City experiences performance issues with the selected candidate and terminates the temporary employee, the Contractor will provide a replacement employee to City, also at no additional charge.

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

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

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

18. Organization

Contractor shall assign **Sandeep Harjani** as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

19. Limitation of Agreement.

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

20. Notice

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

CITY:	CONTRACTOR:
City of Milpitas	Infojini, Inc.
455 E. Calaveras Boulevard	10015 Columbia Road, Suite 301
Milpitas, California 95035	Columbia, MD 21046
Attn: Jeannine Seher, Human Resources Director	Attn: Sandeep Harjani, President

and shall be effective upon receipt thereof.

21. Third Party Rights

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

22. Equal Opportunity Employment.

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

23. Entire Agreement

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

24. Severability

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

25. Successors and Assigns

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

26. Non-Waiver

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

27. Time of Essence

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

28. City's Right to Employ Other Contractors

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

29. Prohibited Interests

Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement,

no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

30. Wage Theft Prevention

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

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

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

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

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

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

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF MILPITAS AND INFOJINI INC

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

CITY OF MILPITAS

Approved By:

_____
Steven G. McHarris, City Manager

_____
Date

Approved As To Form:

_____
Michael Mutalipassi, City Attorney

Approved:

_____
Lauren Lai, CPA, MPA
Finance Director / Risk Manager

Approved As To Content:

_____
Jeannine Seher, Human Resources Director

INFOJINI INC

_____
Signature

_____
Name

_____
Title

_____
Date

EXHIBIT A

Scope of Services

The scope of services described herein is the minimum necessary to meet the City's objectives. The shall be able to provide **some or all** services as laid out below in this scope of services and provide personnel who are competent and capable of performing the necessary tasks generally associated with the job classification types specified in **Exhibit B- City Job Classification Table**.

The Contractor is expected to expand on the scope by incorporating their expertise and proposed method of approach.

SCOPE OF SERVICES

1. The scope of services by the Contractor shall include, but is not limited to:

a. Providing temporary staffing for administrative, clerical, and technical categories.

b. The ability to provide a pool of personnel sufficient to meet the CITY's temporary staffing needs with a minimum notice of **forty-eight hours**.

c. Comparing job requirements with worker qualifications and submitting resumes of temporary staff as requested.

d. Conducting background and reference checks, and drug screening of personnel, at no additional cost to the City.

e. Ensuring temporary staff have been vaccinated for COVID-19, annually or as otherwise required by the City.

f. Identifying prior CalPERS membership of all temporary staff to be assigned to the City to assist in ensuring the City adheres to CalPERS enrollment guidelines. If temporary staff has prior CalPERS membership, identify the number of hour previously worked in the fiscal year (July 1 - June 30).

g. Administering and maintaining all employment and payroll records, payroll processing, and payment of payroll checks and taxes, including the deductions required by state, federal and local laws such as social security and withholding taxes for personnel employed by Contractor.

h. Making all unemployment compensation contributions to Contractor's employee(s) as required by federal and state law and process claims.

i. Covering all costs related to Consultant's employee(s) responsibilities for workers' compensation coverage required by federal and state law and process claims.

j. Arranging for the CITY, if requested by CITY staff, to meet with the temporary staffing candidate, at the Contractor's expense, for a period of up to one (1) hour. *The City would like the option for the department to be able to interview an employee prior to placement to ensure a good fit. The Contractor agrees to compensate the employee for an hour of their time for this purpose. The one-hour therefore, is for the purposes of holding an interviewing, not a response time for the vendor to find the placement.*

k. If staff have inadequate performance or other performance or behavioral issues, Contractor must be able to provide for a replacement within 24 - 48 hours.

l. Contractor will allow City the option of converting temporary employees to permanent hires after 90 days of employment, at no cost to City.

m. Services will be initiated utilizing **Exhibit E- Task Order Form.**

n. The City requires that billing be made for each requesting department designated on the Task Order Form. Invoices will reflect the task order numbers being billed for each requesting department.

2. Provide Cost Proposal for temporary staffing services for a **four (4) year** contract period to perform the above mentioned services on an as-needed and intermittent basis.

a. Identify Contractor's classification or position titles that Contractor is able to fill to meet the City classification needs as identified in **Exhibit B- City Job Classification Table.**

b. All expenses shall be included in the proposed hourly billing rate, and shall include the hourly wage paid to an assigned personnel and the Contractor's overhead, but shall not include reimbursements for travel costs or travel time.

CONTRACTOR RESPONSIBILITIES

1. **Work Order Process**: Contractor will only accept work orders for temporary personnel from the designated City of Milpitas (COM) HR Department employee.

2. **Minimum Qualification Review:** Contractor must screen and test all personnel referred to COM for temporary assignments, pursuant to COM's test criteria and pre-employment standards, before placement is made.

3. **Recruitment Search, Advertising, Networking, Screening**: Contractor will identify three to five candidates from their own network, within one business day of the request, to be interviewed by a COM hiring manager. Contractor will pay for any necessary advertising and marketing to procure finalists. Contractor will ensure availability and interests of candidates, and review credentials of each applicant based on resume, referral sources, and telephone interviews. Contractor will require that all candidates complete a background check which includes education, work and criminal history and ensure that candidates are fingerprinted, at Contractor's cost, prior to their start date with COM. The City will have the final say as to the suitability of the candidate with respect to their background clearance.

4. **Final Reference Checks:** Contractor will complete a detailed reference check of each of the finalist candidates. A minimum of three references must be checked for each finalist, one of which must have had a supervisory relationship to the employee.

5. **Timecards:** Contractor must submit timecards to COM on a weekly basis for approval. Contractor must provide computerized billings on a monthly basis. A copy of the approved timecards must be submitted with the monthly billing. Billing must specify employee name, hours worked and department.

6. **Termination of Candidate's Employment:** : If COM experiences performance issues with the selected candidate and terminates the temporary employee, the Contractor will provide a replacement employee to COM, also at no additional charge.

7. **Status Reports:** Contractor will provide COM with status reports on a monthly (or other agreed upon) basis, in a format approved by COM. Status reports must include the date the request was made; the date of placement; length of placement; cost of placement; job title of placement; hourly billing rate paid; department where placement was made and the name of the requestor.

8. **Optional Permanent Hiring of Temporary Employees**: There shall be no restrictions on the City or penalties or fees imposed by the proposer, should a temporary employee be hired to City employment.

CITY RESPONSIBILITIES

The City will assign a Project Director, or designee who will coordinate City activities with the activities of the Contractor. All contracts within the City must be arranged through the Project Director, or designee.

The City will provide access to position classification descriptions as found on the City website, as needed by the Proposer to determine the requirements for the position. Refer to **Exhibit B- City Job Classification Table** for the job classifications that are part of this solicitation.

The City will determine the hourly base pay rates for each placement.

EXHIBIT B

Schedule of Charges/Payments

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

All expenses are included in the proposed hourly billing rate, and shall include the hourly wage paid to an assigned personnel and the Contractor's overhead, but shall not include reimbursements for travel costs or travel time.

Contractor's hourly fee structure to be charged from the client includes a fixed fee which consist of the flat Markup fee and Candidate pay rate of the consultant from the client. Markup includes Fringe benefits, G&A and profit as follows:

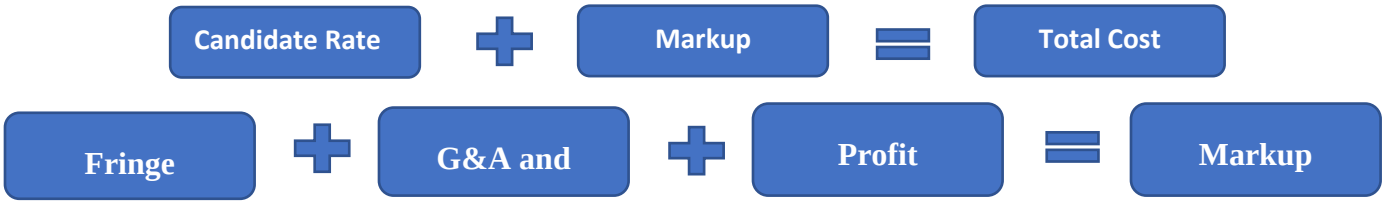
Fringe Benefits, G&A and Overhead: Employer contributed Social Security, Medicare, SUTA, FUTA, Health Insurance and paid time off including Authority holidays and vacation, Accounting and payroll cost of HR, Project Manager, immigration sponsorship (if required), and employee engagement, any other benefits.

[CITY JOB CLASSIFCATION TABLE ON FOLLOWING PAGE]

1 COST PROPOSAL

We have an hourly fee structure to be charged from the client. We have strong and proven track record to deliver best staffing resources to different federal, state and county agencies since 2006. We charge a fixed fee which consist of the flat Markup fee and pay rate of the consultant from the client.

Following is Infojini Inc.'s pricing structure to determine the total cost:



Fringe Benefits, G&A and Overhead: Employer contributed Social Security, Medicare, SUTA, FUTA, Health Insurance and paid time off including Authority holidays and vacation, Accounting and payroll cost of HR, Project Manager, immigration sponsorship (if required), and employee engagement, any other benefits.

Exhibit A: The City is looking for Contractor(s) who can, at a minimum, provide services comparable to a majority of the following City Classifications. Please check City's website for full class descriptions. If Contractor does not have workers who can provide comparable services, please indicate with an N/A. For each of the years, please identify hourly rates for each Job Title. Column #7 - Percent Increase - Should reflect the **Total Percentage** increase over the life of the contract (years 1 through 4). Overtime rate will be 1 ½ times the hourly rate. Weekend and Holiday rate will be 2 times the hourly rate.

City Job Title	Contractor's Comparable Job Title	Hourly Rate Year 1	Hourly Rate Year 2	Hourly Rate Year 3	Hourly Rate Year 4	Percent Increase in hourly rate from Year 1 to Year 4
Administrative Analyst I	Administrative Analyst I	$ 45	$ 45.9	$ 46.82	$ 47.75	6% (2% each year)
Administrative Analyst II	Administrative Analyst II	$ 55	$ 56.1	$ 57.22	$ 58.36	
Administrative Assistant	Administrative Assistant	$ 42	$ 42.8	$ 43.69	$ 44.57	
Assistant Civil Engineer	Assistant Civil Engineer	$ 65	$ 66.3	$ 67.62	$ 68.97	
Associate Engineer	Associate Engineer	$ 51	$ 52.02	$ 53.06	$ 54.121	
Budget Manager	Budget Manager	$ 83.95	$ 85.62	$ 87.34	$ 89.08	
Building Inspector	Building Inspector	$ 58	$ 59.16	$ 60.34	$ 61.55	

Building Permit Technician	Building Permit Technician	$ 35	$ 35.7	$ 36.41	$ 37.14	
Buyer	Buyer	$ 50	$ 51	$ 52.02	$ 53.06	
Customer Services Supervisor	Customer Services Supervisor	$ 60	$ 61.2	$ 62.41	$ 63.67	
Engineering Aide	Engineering Aide	$ 51.22	$ 52.24	$ 53.28	$ 54.35	
Engineering Permit Technician	Engineering Permit Technician	$ 46.11	$ 47.03	$ 47.97	$ 48.93	
Executive Assistant	Executive Assistant	$ 45	$ 45.9	$ 46.81	$ 47.75	
Finance Manager	Finance Manager	$ 88.47	$ 90.23	$ 92.04	$ 93.88	
Financial Analyst I	Financial Analyst I	$ 53.77	$ 54.84	$ 55.94	$ 57.06	
Financial Analyst II	Financial Analyst II	$ 59.39	$ 60.57	$ 61.78	$ 63.02	
Fire Inspector	Fire Inspector	$ 72	$ 73.44	$ 74.90	$ 76.40	
Human Resources Analyst I	Human Resources Analyst I	$ 35	$ 35.7	$ 36.41	$ 37.14	
Human Resources Analyst II	Human Resources Analyst II	$ 45	$ 45.9	$ 46.81	$ 47.75	
Human Resources Assistant	Human Resources Assistant	$ 31	$ 31.62	$32.25	$ 32.89	
Human Resources Technician	Human Resources Technician	$ 45.95	$ 46.86	$ 47.80	$ 48.76	
Information Services Analyst	Information Services Analyst	$ 72.94	$ 74.39	$ 75.88	$ 77.40	
Junior Accountant	Junior Accountant	$ 45	$ 45.9	$ 46.81	$ 47.75	
Junior Civil Engineer	Junior Civil Engineer	$ 55	$ 56.1	$ 57.22	$ 58.36	
Maintenance Custodian I	Maintenance Custodian I	$ 31.39	$ 32.01	$ 32.65	$ 33.31	
Maintenance Custodian II	Maintenance Custodian II	$ 34.53	$ 35.22	$ 35.92	$ 36.64	

Use or disclosure of data contained on this sheet is subject to the restrictions on title page of this proposal

Maintenance Worker I	Maintenance Worker I	$ 34.53	$ 35.22	$ 35.92	$ 36.64	
Maintenance Worker II	Maintenance Worker II	$ 37.98	$ 38.73	$ 39.51	$ 40.30	
Meter Reader	Meter Reader	$ 29	$ 29.58	$ 30.17	$ 30.77	
Office Assistant I	Office Assistant I	$ 33.66	$ 34.33	$ 35.01	$ 35.72	
Office Assistant II	Office Assistant II	$ 37.03	$ 37.77	$ 66.77	$ 68.10	
Office Specialist	Office Specialist	$ 43.86	$ 44.73	$ 45.63	$ 46.54	
Payroll Specialist	Payroll Specialist	$ 35	$ 35.7	$ 36.41	$ 37.14	
Plan Checker	Plan Checker	$ 64.64	$ 65.93	$ 67.25	$ 68.59	
Principal Engineer	Principal Engineer	$ 110	$ 112.2	$ 114.4	$ 116.73	
Public Services Assistant I	Public Services Assistant I	$ 38.71	$ 39.48	$ 40.27	$ 41.07	
Public Services Assistant II	Public Services Assistant II	$ 42.59	$ 43.44	$ 44.31	$ 45.19	
Purchasing Agent	Purchasing Agent	$ 73.71	$ 75.18	$ 76.68	$ 78.22	
Senior Accountant	Senior Accountant	$ 66.85	$ 68.18	$ 69.55	$ 70.94	
Senior Accounting Technician	Senior Accounting Technician	$ 48.25	$ 49.21	$ 50.19	$ 51.19	
Senior Administrative Analyst	Senior Administrative Analyst	$ 45	$ 45.9	$ 46.81	$ 47.75	
Senior HR Analyst	Senior HR Analyst	$ 60	$ 61.2	$ 62.41	$ 63.67	
Sr. Information Analyst/Dev	Sr. Information Analyst/Dev	$ 95	$ 96.9	$ 98.83	$ 100.81	
Sr. Project Manager	Sr. Project Manager	$ 110	$ 112.2	$ 114.4	$ 116.73	
Sr. Public Services Assistant	Sr. Public Services Assistant	$ 47.50	$ 48.45	$ 49.419	$ 50.40	
Staff Assistant	Staff Assistant	$ 30	$ 30.6	$ 31.21	$ 31.83	

Use or disclosure of data contained on this sheet is subject to the restrictions on title page of this proposal

EXHIBIT C

Activity Schedule

[RESERVED]

EXHIBIT D

INSURANCE REQUIREMENTS

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

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

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

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

Commercial General Liability (CGL):

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

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

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

Automobile Liability:

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

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

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

Professional Liability (Errors and Omissions):

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

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

___ Insurance appropriates to the Contractor or Contractor's profession, with limit no less than _____ per occurrence or claim, _____ aggregate

Workers' Compensation Insurance:

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

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

Builder's Risk (Course of Construction):

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

Contractor's or Contractor's Pollution Legal Liability:

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

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

Cyber Liability Insurance

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

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

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

Surety Bonds:

Contractor shall provide the following Surety Bonds:

____ Bid Bond
____ Performance Bond
____ Payment Bond

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

Other Insurance Provisions:

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

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

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

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain

a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

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

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

_X__ Notice of Cancellation, Suspension or Otherwise Voiding Policies:

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

_X__ Waiver of Subrogation:

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

___ Completed Operations

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

<u>THE FOLLOWING PROVISIONS APPLY TO ALL AGREEMENTS</u>

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

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

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

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

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

Acceptability of Insurers:

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

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

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

Subcontractors:

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

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

Verification of Coverage:

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

Special Risks or Circumstances

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

Failure to Comply:

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

Applicability of Coverage:

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

Exhibit E

[TASK ORDER FORM ON FOLLOWING PAGE]

TASK ORDER

The Contractor hereby agrees to perform the Services authorized herein in accordance with all the terms and conditions of the Contract. The Contractor shall furnish the necessary professional and technical personnel and materials required to complete this work.

Task Order No. _____ (HR to provide)

Contractor: _____ Requesting Department: _____

Term: Effective:___/_____/_____and continue in effect through ___/____/_____

Job Classification :_____

Shift Days: _____ **Shift Hours/Per Week: _____**

Shift Hours: _____

Hourly Rate to be Billed to the City: $_____

Funding Source

Fund: _____ Function: _____ Object Code: _____

Personnel: *attach Resume*

Approvals

Project Manager: _____ Department Head: _____

Executed by:

City of Milpitas ***Contractor Name***

_____ _____

Signature Date Signature Date

_____ _____

Printed Name & Title Printed Name & Title

MASTER SERVICES AGREEMENT
BETWEEN THE
CITY OF MILPITAS AND CYNET SYSTEMS INC

This Agreement is made and entered into as of _____ ("Effective Date") by and between the City of Milpitas, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 ("City"), and **Cynet Systems, Inc.** a California corporation with its principal place of business at **21000 Atlantic Blvd. #700, Sterling, VA 20166**(hereinafter referred to as "Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

RECITALS

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

On-Call Temporary Personnel Services
(hereinafter referred to as "the Project").

B. Contractor submitted its qualifications to City to provide **On-Call Temporary Personnel Services** on an as-needed basis and is one of several Contractors selected by City to provide services

C. Contractor is duly licensed and has the necessary qualifications to provide such services.

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

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services.

Contractor shall provide the City with the services described in the Scope of Services attached hereto as Exhibit A. City will notify Contractor when it needs services that it believes Contractor is qualified to provide. Nothing herein obligates City to notify Contractor about every temporary staffing need. City reserves the right to solicit the services described in Exhibit A from any provider or no provider at all.

2. Compensation.

a. Subject to paragraph 2(b) below, the City shall pay for such services in accordance with the rates set forth in the Schedule of Charges set forth in Exhibit B. Each month, Contractor shall furnish to the City a statement of the work performed for compensation during the preceding month. All work is subject to City review and approval prior to payment.

b. In no event shall the total amount paid for services rendered by Contractor under this Agreement exceed the sum of **Five Hundred Thousand Dollars and Zero Cents ($500,000.000)**. This amount is to cover all printing and related costs, and the City will not pay any additional fees for printing expenses. Periodic payments shall be made within thirty (30) days of receipt of an invoice which includes a detailed

description of the work performed. Payments to Contractor for work performed will be made on a monthly billing basis.

3. Additional Work.

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

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred and services provided shall be maintained by Contractor and made available at all reasonable times during the Agreement term and for three (3) years from the date of final payment under the Agreement for inspection by City.

5. Term.

The term of this Agreement shall be from **July 1, 2022** to **June 30, 2026**, unless earlier terminated as provided herein. The City reserves the right to review the Contractor's performance at the end of each year and cancel all or part of the Agreement.

6. Delays in Performance.

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

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

7. Compliance with Law.

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

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

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

8. Standard of Care

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

9. Assignment and Sub-Contractor

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

10. Independent Contractor

Contractor is retained as an independent contractor and is not an employee of City. No employee or agent of Contractor shall become an employee of City, except as set forth in Exhibit A section 1.l.. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided.

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

12. Indemnification.

a. To the fullest extent permitted by law, Contractor 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 Contractor, its officials, officers, employees, subcontractors, Contractors or agents in connection with the performance of the Contractor'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. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Contractor, the City, its officials, officers, employees, agents, or volunteers.

b. 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 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, Contractor's liability for such claim, including the cost to defend, shall not exceed the Contractor's proportionate percentage of fault.

13. California Labor Code Requirements.

a. Contractor is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage

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

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

c. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Contractor's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of services, 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 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.

14. Verification of Employment Eligibility.

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

15. Laws and Venue.

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

16. Termination or Abandonment

a. City has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Contractor. City shall pay Contractor the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by City and Contractor of the portion of such task completed but not paid prior to said termination. City shall not be liable for any costs other than the charges or portions thereof

which are specified herein. Contractor shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work. If City experiences performance issues with the selected candidate and terminates the temporary employee, the Contractor will provide a replacement employee to City, also at no additional charge.

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

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

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

18. Organization

Contractor shall assign **Arpit Paul** as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

19. Limitation of Agreement.

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

20. Notice

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

CITY:	CONTRACTOR:
City of Milpitas	Cynet Systems, Inc.
455 E. Calaveras Boulevard	21000 Atlantic Blvd. #700
Milpitas, California 95035	Sterling, VA 20166
Attn: Jeannine Seher, Human Resources Director	Attn: Arpit Paul

and shall be effective upon receipt thereof.

21. Third Party Rights

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

22. Equal Opportunity Employment.

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

23. Entire Agreement

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

24. Severability

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

25. Successors and Assigns

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

26. Non-Waiver

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

27. Time of Essence

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

28. City's Right to Employ Other Contractors

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

29. Prohibited Interests

Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement,

no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

30. Wage Theft Prevention

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

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

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

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

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

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

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF MILPITAS AND CYNET SYSTEMS INC

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

CITY OF MILPITAS

Approved By:

_____
Steven G. McHarris, City Manager

_____
Date

Approved As To Form:

_____
Michael Mutalipassi, City Attorney

Approved:

_____
Lauren Lai, CPA, MPA
Finance Director / Risk Manager

Approved As To Content:

_____
Jeannine Seher, Human Resources Director

CYNET SYSTEMS INC

_____
Signature

_____
Name

_____
Title

_____
Date

EXHIBIT A

Scope of Services

The scope of services described herein is the minimum necessary to meet the City's objectives. The shall be able to provide **some or all** services as laid out below in this scope of services and provide personnel who are competent and capable of performing the necessary tasks generally associated with the job classification types specified in **Exhibit B- City Job Classification Table**.

The Contractor is expected to expand on the scope by incorporating their expertise and proposed method of approach.

SCOPE OF SERVICES

1. The scope of services by the Contractor shall include, but is not limited to:

a. Providing temporary staffing for administrative, clerical, and technical categories.

b. The ability to provide a pool of personnel sufficient to meet the CITY's temporary staffing needs with a minimum notice of **forty-eight hours**.

c. Comparing job requirements with worker qualifications and submitting resumes of temporary staff as requested.

d. Conducting background and reference checks, and drug screening of personnel, at no additional cost to the City.

e. Ensuring temporary staff have been vaccinated for COVID-19, annually or as otherwise required by the City.

f. Identifying prior CalPERS membership of all temporary staff to be assigned to the City to assist in ensuring the City adheres to CalPERS enrollment guidelines. If temporary staff has prior CalPERS membership, identify the number of hour previously worked in the fiscal year (July 1 - June 30).

g. Administering and maintaining all employment and payroll records, payroll processing, and payment of payroll checks and taxes, including the deductions required by state, federal and local laws such as social security and withholding taxes for personnel employed by Contractor.

h. Making all unemployment compensation contributions to Contractor's employee(s) as required by federal and state law and process claims.

i. Covering all costs related to Consultant's employee(s) responsibilities for workers' compensation coverage required by federal and state law and process claims.

j. Arranging for the CITY, if requested by CITY staff, to meet with the temporary staffing candidate, at the Contractor's expense, for a period of up to one (1) hour. *The City would like the option for the department to be able to interview an employee prior to placement to ensure a good fit. The Contractor agrees to compensate the employee for an hour of their time for this purpose. The one-hour therefore, is for the purposes of holding an interviewing, not a response time for the vendor to find the placement.*

k. If staff have inadequate performance or other performance or behavioral issues, Contractor must be able to provide for a replacement within 24 - 48 hours.

l. Contractor will allow City the option of converting temporary employees to permanent hires after 90 days of employment, at no cost to City.

m. Services will be initiated utilizing **Exhibit E- Task Order Form.**

n. The City requires that billing be made for each requesting department designated on the Task Order Form. Invoices will reflect the task order numbers being billed for each requesting department.

2. Provide Cost Proposal for temporary staffing services for a **four (4) year** contract period to perform the above mentioned services on an as-needed and intermittent basis.

a. Identify Contractor's classification or position titles that Contractor is able to fill to meet the City classification needs as identified in **Exhibit B- City Job Classification Table.**

b. All expenses shall be included in the proposed hourly billing rate, and shall include the hourly wage paid to an assigned personnel and the Contractor's overhead, but shall not include reimbursements for travel costs or travel time.

CONTRACTOR RESPONSIBILITIES

1. **Work Order Process**: Contractor will only accept work orders for temporary personnel from the designated City of Milpitas (COM) HR Department employee.

2. **Minimum Qualification Review:** Contractor must screen and test all personnel referred to COM for temporary assignments, pursuant to COM's test criteria and pre-employment standards, before placement is made.

3. **Recruitment Search, Advertising, Networking, Screening**: Contractor will identify three to five candidates from their own network, within one business day of the request, to be interviewed by a COM hiring manager. Contractor will pay for any necessary advertising and marketing to procure finalists. Contractor will ensure availability and interests of candidates, and review credentials of each applicant based on resume, referral sources, and telephone interviews. Contractor will require that all candidates complete a background check which includes education, work and criminal history and ensure that candidates are fingerprinted, at Contractor's cost, prior to their start date with COM. The City will have the final say as to the suitability of the candidate with respect to their background clearance.

4. **Final Reference Checks:** Contractor will complete a detailed reference check of each of the finalist candidates. A minimum of three references must be checked for each finalist, one of which must have had a supervisory relationship to the employee.

5. **Timecards:** Contractor must submit timecards to COM on a weekly basis for approval. Contractor must provide computerized billings on a monthly basis. A copy of the approved timecards must be submitted with the monthly billing. Billing must specify employee name, hours worked and department.

6. **Termination of Candidate's Employment:** : If COM experiences performance issues with the selected candidate and terminates the temporary employee, the Contractor will provide a replacement employee to COM, also at no additional charge.

7. **Status Reports:** Contractor will provide COM with status reports on a monthly (or other agreed upon) basis, in a format approved by COM. Status reports must include the date the request was made; the date of placement; length of placement; cost of placement; job title of placement; hourly billing rate paid; department where placement was made and the name of the requestor.

8. **Optional Permanent Hiring of Temporary Employees**: There shall be no restrictions on the City or penalties or fees imposed by the proposer, should a temporary employee be hired to City employment.

CITY RESPONSIBILITIES

The City will assign a Project Director, or designee who will coordinate City activities with the activities of the Contractor. All contracts within the City must be arranged through the Project Director, or designee.

The City will provide access to position classification descriptions as found on the City website, as needed by the Proposer to determine the requirements for the position. Refer to **Exhibit B- City Job Classification Table** for the job classifications that are part of this solicitation.

The City will determine the hourly base pay rates for each placement.

EXHIBIT B

Schedule of Charges/Payments

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

All expenses are included in the proposed hourly billing rate and shall include the hourly wage paid to an assigned personnel and the Contractor's overhead and additional costs.

[CITY JOB CLASSIFCATION TABLE ON FOLLOWING PAGE]

Exhibit A: The City is looking for Contractor(s) who can, at a minimum, provide services comparable to a majority of the following City Classifications. Please check City's website for full class descriptions. If Contractor does not have workers who can provide comparable services, please indicate with an N/A. For each of the years, please identify hourly rates for each Job Title.
Column #7 - Percent Increase - Should reflect the **Total Percentage** increase over the life of the contract (years 1 through 4).
Overtime rate will be 1 ½ times the hourly rate. Weekend and Holiday rate will be 2 times the hourly rate.

City Job Title	Contractor's Comparable Job Title	Hourly Rate Year 1	Hourly Rate Year 2	Hourly Rate Year 3	Hourly Rate Year 4	Percent Increase in hourly rate from Year 1 to Year 4
Administrative Analyst I	N/A	50.16	50.66	51.17	51.68	1 % (each year)
Administrative Analyst II	N/A	55.44	55.99	56.55	57.12	1 % (each year)
Administrative Assistant	N/A	47.52	48.00	48.48	48.96	1 % (each year)
Assistant Civil Engineer	N/A	72.60	73.33	74.06	74.80	1 % (each year)
Associate Engineer	N/A	83.16	83.99	84.83	85.68	1 % (each year)
Budget Manager	N/A	69.96	70.66	71.37	72.08	1 % (each year)
Building Inspector	N/A	66.00	66.66	67.33	68.00	1 % (each year)
Building Permit Technician	N/A	50.16	50.66	51.17	51.68	1 % (each year)
Buyer	N/A	51.48	51.99	52.51	53.04	1 % (each year)
Customer Services Supervisor	N/A	42.24	42.66	43.09	43.52	1 % (each year)
Engineering Aide	N/A	58.08	58.66	59.25	59.84	1 % (each year)
Engineering Permit Technician	N/A	52.80	53.33	53.86	54.40	1 % (each year)
Executive Assistant	N/A	60.72	61.33	61.94	62.56	1 % (each year)
Finance Manager	N/A	92.40	93.32	94.26	95.20	1 % (each year)
Financial Analyst I	N/A	58.08	58.66	59.25	59.84	1 % (each year)
Financial Analyst II	N/A	63.36	63.99	64.63	65.28	1 % (each year)
Fire Inspector	N/A	60.72	61.33	61.94	62.56	1 % (each year)
Human Resources Analyst I	N/A	62.04	62.66	63.29	63.92	1 % (each year)
Human Resources Analyst II	N/A	67.32	67.99	68.67	69.36	1 % (each year)
Human Resources Assistant	N/A	42.24	42.66	43.09	43.52	1 % (each year)
Human Resources Technician	N/A	50.16	50.66	51.17	51.68	1 % (each year)

Information Services Analyst	N/A	77.88	78.66	79.45	80.24	1 % (each year)
Junior Accountant	N/A	60.72	61.33	61.94	62.56	1 % (each year)
Junior Civil Engineer	N/A	66.00	66.66	67.33	68.00	1 % (each year)
Maintenance Custodian I	N/A	40.92	41.33	41.74	42.16	1 % (each year)
Maintenance Custodian II	N/A	43.56	44.00	44.44	44.88	1 % (each year)
Maintenance Worker I	N/A	43.56	44.00	44.44	44.88	1 % (each year)
Maintenance Worker II	N/A	50.16	50.66	51.17	51.68	1 % (each year)
Meter Reader	N/A	30.36	30.66	30.97	31.28	1 % (each year)
Office Assistant I	N/A	38.28	38.66	39.05	39.44	1 % (each year)
Office Assistant II	N/A	42.24	42.66	43.09	43.52	1 % (each year)
Office Specialist	N/A	47.52	48.00	48.48	48.96	1 % (each year)
Payroll Specialist	N/A	51.48	51.99	52.51	53.04	1 % (each year)
Plan Checker	N/A	68.64	69.33	70.02	70.72	1 % (each year)
Principal Engineer	N/A	92.40	93.32	94.26	95.20	1 % (each year)
Public Services Assistant I	N/A	43.56	44.00	44.44	44.88	1 % (each year)
Public Services Assistant II	N/A	47.52	48.00	48.48	48.96	1 % (each year)
Purchasing Agent	N/A	79.20	79.99	80.79	81.60	1 % (each year)
Senior Accountant	N/A	71.28	71.99	72.71	73.44	1 % (each year)
Senior Accounting Technician	N/A	50.16	50.66	51.17	51.68	1 % (each year)
Senior Administrative Analyst	N/A	72.60	73.33	74.06	74.80	1 % (each year)
Senior HR Analyst	N/A	68.64	69.33	70.02	70.72	1 % (each year)
Sr. Information Analyst/Dev	N/A	76.56	77.33	78.10	78.88	1 % (each year)
Sr. Project Manager	N/A	99.00	99.99	100.99	102.00	1 % (each year)
Sr. Public Services Assistant	N/A	52.80	53.33	53.86	54.40	1 % (each year)
Staff Assistant	N/A	22.44	22.66	22.89	23.12	1 % (each year)
TOTAL (in figure)		2694.12	2721.06	2748.31	2775.76	1 % (each year)

TOTAL (in words)		Two Thousand Six Hundred Ninety-Four and twelve cents	Two Thousand Seven Hundred Twenty-One and six cents	Two Thousand Seven Hundred Forty-Eight and Thirty-One cents	Two Thousand Seven Hundred Seventy-Five and Seventy-Six cents	One percent each year

Signature:

Name: Ashwani Mayur (Co-CEO & CFO)

EXHIBIT C

Activity Schedule

[RESERVED]

EXHIBIT D

INSURANCE REQUIREMENTS

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

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

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

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

Commercial General Liability (CGL):

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

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

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

Automobile Liability:

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

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

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

Professional Liability (Errors and Omissions):

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

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

___ Insurance appropriates to the Contractor or Contractor's profession, with limit no less than _____ per occurrence or claim, _____ aggregate

Workers' Compensation Insurance:

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

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

Builder's Risk (Course of Construction):

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

Contractor's or Contractor's Pollution Legal Liability:

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

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

Cyber Liability Insurance

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

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

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

Surety Bonds:

Contractor shall provide the following Surety Bonds:

____ Bid Bond
____ Performance Bond
____ Payment Bond

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

Other Insurance Provisions:

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

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

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

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain

a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

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

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

_X__ Notice of Cancellation, Suspension or Otherwise Voiding Policies:

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

_X__ Waiver of Subrogation:

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

___ Completed Operations

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

<u>THE FOLLOWING PROVISIONS APPLY TO ALL AGREEMENTS</u>

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

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

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

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

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

Acceptability of Insurers:

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

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

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

Subcontractors:

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

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

Verification of Coverage:

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

Special Risks or Circumstances

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

Failure to Comply:

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

Applicability of Coverage:

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

Exhibit E

[TASK ORDER FORM ON FOLLOWING PAGE]

TASK ORDER

The Contractor hereby agrees to perform the Services authorized herein in accordance with all the terms and conditions of the Contract. The Contractor shall furnish the necessary professional and technical personnel and materials required to complete this work.

Task Order No. _____ (HR to provide)

Contractor: _____ Requesting Department: _____

Term: Effective:___/_____/_____and continue in effect through ___/____/_____

Job Classification :_____

Shift Days: _____ **Shift Hours/Per Week: _____**

Shift Hours: _____

Hourly Rate to be Billed to the City: $_____

Funding Source

Fund: _____ Function: _____ Object Code: _____

Personnel: *attach Resume*

Approvals

Project Manager: _____ Department Head: _____

Executed by:

City of Milpitas ***Contractor Name***

_____ _____

Signature Date Signature Date

_____ _____

Printed Name & Title Printed Name & Title

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Receive an Update on the Emergency Replacement of Two (2) Boilers and Install of a Temporary Heating System for the Public Works, Information Technology, and Police Department Building and Determine that the Condition Continues to Constitute an Emergency (Staff Contact: Tony Ndah, Public Works Director, 408-586-2602)**
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	6/21/2022
	Recommendation: Receive an update on the emergency replacement of two boilers and the installation of a temporary heating system for the Public Works, Police and Information Technology Department buildings; and (2) Determine by a four-fifths vote that the condition continues to constitute an emergency.

Background:
Pursuant to Public Contract Code section 22050 and Council Resolution No. 9134, the Director of Public Works, in the case of emergency, may authorize a repair of a public facility and procure the work without giving notice for bids to let contracts. An emergency is defined as "a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services." Additionally, State law requires the Public Works Director, as the City official with delegated authority to take emergency action, to report any emergency authorization and the reason(s) for the authorization to the City Council not later than seven days after the action, or at its next regularly scheduled meeting if that meeting will occur not later than 14 days after the action. Further, the Public Works Director is required to report why the emergency would not permit a delay resulting from a competitive solicitation for bids and the City Council is required to review the emergency action at every regularly scheduled meeting thereafter until the emergency repair is completed. The City Council shall continue to review the emergency action at every regularly scheduled meeting thereafter until the action is terminated. At each review, the City Council shall determine, by a four-fifths vote, whether there is a need to continue the action.

Consistent with applicable State law and Council Resolution, on April 1, 2022, the Public Works Director authorized the City to contract with its existing HVAC maintenance contractor, Environmental Systems Inc. (ESI), for the replacement of two (2) boilers and the installation of a temporary heating system for the Public Works, Information Technology and Police Department buildings.

At the June 7, 2022 City Council meeting, the City Council received an update regarding the emergency replacement of two (2) boilers and the installation of a temporary heating system for the Public Works, Information Technology and Police Department buildings and determined that the condition continues to constitute an emergency.

Analysis:
The install of the temporary heating system was completed on Friday, April 15, and is currently operational providing heat to the building. Due to supply chain delays, the two (2) new boilers, which were ordered, are expected to arrive in mid-July 2022 versus mid-June, as previously reported.

Staff is recommending that the City Council determine, by a four-fifths vote, that there is a need to continue the emergency action declared by the Public Works Director. Staff will return to City Council with an update at every regularly scheduled City Council meeting until the emergency action is terminated.

Fiscal Impact:
The estimated repair and temporary heating installation cost of $208,968 will be paid from the Unanticipated Expenditure Reserve.

California Environmental Quality Act:
The emergency repair work is exempt from CEQA, per CEQA Guidelines Section 15301, Existing Facilities and 15302, Replacement or Reconstruction.

Recommendations:
1. Receive an update on the emergency replacement of two (2) boilers and the installation of a temporary heating system for the Public Works, Police and Information Technology Department buildings.
2. Determine by a four-fifths vote that the condition continues to constitute an emergency.

Attachment:
N/A

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	Amended and Restated Weed Abatement Agreement Between City of Milpitas and the County of Santa Clara Consumer and Environmental Protection Agency - Weed Abatement Program (Staff Contact: Arthur Belton / Albert Zamora, Deputy Fire Chief / Fire Marshal, 408-586-3378 / 3371)
Category:	Consent Calendar-Public Safety
Meeting Date:	6/21/2022
	Recommendation: Approve and authorize the City Manager to execute and sign the Amended and Restated Weed Abatement Agreement Between City of Milpitas and the County of Santa Clara Consumer and Environmental Protection Agency - Weed Abatement Program.

Background:
On February 2, 1976, both the City of Milpitas and the County of Santa Clara Consumer and Environmental Protection Agency - Weed Abatement Program entered into an Agreement for the County to abate weeds for the City of Milpitas. The purpose of the Agreement is to promote the efficiency and economy of operations in the abatement of weeds by the City and the County.

The major procedural functions to be performed by the County and / or City shall include but not limited to:

1. The County shall prepare the list of parcels requiring abatement of weeds in the City and transmit the said list to the City for review and approval for processing.

2. The County shall prepare the notice of weed abatement and cause such notice to be mailed to the owners of the parcels requiring weed abatement.

3. The City Council shall conduct public hearings on the proposed removal of weeds pursuant to the provisions of the City Ordinance when the City Fire Marshal presents such appropriate resolutions for adoption. The City Council may by resolution declare the weeds on the respective parcels of the land as nuisance, and make the determination to proceed with the abatement of weeds, and authorize the performance of the service to remove the weeds in accordance with the aforementioned Agreement.

4. Upon proper authorization by the City, the County shall remove the weeds on the designated properties.

5. The County shall render to the City an itemized assessment report for the cost of the weed abatement services performed per the respective parcels.

6. The City Council, after a public hearing, shall require the County Assessor's Office to include the costs of the weed abatement services performed for the City for the current year, as a special assessment on bills for taxes levied against the affected parcels. Such special assessments shall be liens on the respective properties.

7. Pursuant to California Health and Safety Code 14915, a copy of the report, as confirmed, shall be turned over to the auditor of the county, on or before the tenth day of August following such confirmation, and the auditor shall enter the amounts of the assessments against the respective parcels of land as they appear on the current assessment roll, (Amended by Stats. 1939, Ch. 354).

Analysis:
The initial Weed Abatement Agreement between the City of Milpitas and the County of Santa Clara Consumer and Environmental Protection Agency - Weed Abatement Program was first established on February 2, 1976. Since then there have been six subsequent amendments to the original Agreement; February 15, 1983, January 14, 1996, August 18, 1998, August 17, 1999, January 12, 2001, and December 21, 2011. The intent of the Amended and Restated Agreement is to in part modernize and provide consistency with current County standards. The key changes within this Agreement are as follows:

1. Added a scope of work performance schedule.
2. Expanded the statement of cost to include all amendments.
3. Integrated Liability into the Indemnification Section to protect the City and County.
4. Added language for the County to maintain job records covering the costs of services performed under this Agreement for a minimum of three (3) years.
5. Sections 10 through 22 were all added to be consistent with the County's contract policies and procedures.

Jurisdictional Oversight:
The City of Milpitas is the Authority Having Jurisdiction (AHJ) relative to the enforcement and abatement of overgrown vegetation and weeds throughout the city limits, both public and private, except for the following agencies:

1. **California Department of Transportation** – On / Off ramps, certain areas under joint contractual agreements between City of Milpitas Public Works Department and Cal-Trans, embankments, and right of ways along the 880 and 680 Freeways.

2. **Santa Clara Valley Water District** – All creeks and associated tributary waterways.

3. **San Jose Roads and Airports** – Medium strip along Montague Expressway after the Freeway 680 Overpass (heading east bound) to Dempsey Rd.

Fiscal Impact:
At the first City Council meeting in August of each year during a public hearing, the City's municipal code provides that the City Council hear the assessment report for the list of properties where the weeds were abated within the City, together with any objections of the property owners liable to be assessed, and to make such modifications on the proposed assessment as it deems necessary. Following the adoption by the City Council, the resolution will be recorded, and the changes thereon become a lien on the land involved to be collected in the same manner as property taxes. The County typically adjust their fees annually to ensure that they will recover all costs from the property owners within the weed abatement program. However, when the County's costs are not covered, cost recovery in accordance with Section 7C of the Agreement may be applied.

California Environmental Quality Act:
This project is exempt from CEQA.

Recommendations:
Approve and authorize the City Manager to execute and sign the Amended and Restated Weed Abatement Agreement Between City of Milpitas and the County of Santa Clara Consumer and Environmental Protection Agency - Weed Abatement Program.

Attachment:
1. Amended and Restated Weed Abatement Agreement Between City of Milpitas and the County of Santa Clara Consumer and Environmental Protection Agency - Weed Abatement Program.

AMENDED AND RESTATED AGREEMENT BETWEEN THE COUNTY OF SANTA CLARA AND THE CITY OF MILPITAS FOR WEED ABATEMENT SERVICES

THIS AGREEMENT for the Abatement of Weeds by County of Santa Clara for the City of Milpitas ("AGREEMENT") is made and entered into by and among the County of Santa Clara, a political subdivision of the State of California ("COUNTY"), and the City of Milpitas ("CITY"), a municipal corporation, effective this June 21, 2022 ("EFFECTIVE DATE"). COUNTY and CITY may be collectively referred to herein as the "PARTIES" and individually as a "PARTY," unless specifically identified otherwise.

RECITALS

WHEREAS, pursuant to California Government Code Sections 39501 et seq., the CITY has the authority to require and provide for the abatement of hazardous weeds on properties within its jurisdiction either by ordinance or pursuant to the procedures set forth in Article 2 of Chapter 13, Division 3 of Title 4 of the Government Code (commencing with Section 39560); and

WHEREAS, the CITY has duly established under Title V, Chapter 202 of the Milpitas Municipal Code a program to abate as a public nuisance hazardous weeds and brush situated on properties in the CITY; and

WHEREAS, under provisions of the California Health and Safety Code and its ordinances, the County also has duly established a program to enforce the abatement of hazardous weeds; and

WHEREAS, for reasons of efficiency, economy of operations and resources, and the mutual benefit of both parties, the CITY and the COUNTY desire the COUNTY to provide weed abatement services on properties in the CITY and to assist the CITY in administering certain parts of the CITY'S weed abatement program under Title V, Chapter 202 of the Milpitas Municipal Code, all in accordance with the terms and provisions set forth in this AGREEMENT; and

WHEREAS, the CITY may contract with COUNTY pursuant to Government Code section 51300 et seq. for the County's performance of specified City functions; and

WHEREAS, the CITY and COUNTY entered into an "Agreement for the Abatement of Weeds by County of Santa Clara for the City of Milpitas" on February 2, 1976, as subsequently amended, which provided for the abatement of weeds by the COUNTY on behalf of the CITY; and

WHEREAS, the CITY and COUNTY desire to enter into an amended and restated AGREEMENT for the abatement of weeds to provide for the COUNTY to fully recover its service costs in administering the CITY's weed abatement program and to make other clarifying changes.

NOW, THEREFORE, in consideration of their mutual promises, covenants, and agreements set forth in this AGREEMENT, the PARTIES hereby agree as follows:

SECTION 1. PURPOSE.

The purpose of this AGREEMENT is to promote efficiency and economy of operations and resources in the abatement of weeds in the CITY and COUNTY. To achieve this end, the CITY hereby delegates to the COUNTY and the COUNTY hereby accepts the responsibility of abating weeds on properties in the

CITY and administering the CITY's weed abatement program, set forth in Title V, Chapter 202 of the Milpitas Municipal Code ("PROGRAM"), subject to and in accordance with this AGREEMENT.

SECTION 2. TERM.

This AGREEMENT shall become effective as of the EFFECTIVE DATE and shall continue until the governing body of the CITY or the COUNTY exercises the right to terminate this AGREEMENT pursuant to SECTION 18 of this AGREEMENT. This AGREEMENT supersedes and replaces the previous "Agreement for the Abatement of Weeds by County of Santa Clara for the City of Milpitas" and any and all subsequent amendments thereto.

SECTION 3. SCOPE OF SERVICES; PERFORMANCE SCHEDULE.

A. The COUNTY shall perform weed abatement services on properties located in the CITY and administer the PROGRAM (collectively, the "SERVICES") in accordance with all applicable laws, rules, and regulations, including Title V, Chapter 202 of the Milpitas Municipal Code, and the provisions of this AGREEMENT, as they may be amended from time to time.

B. The COUNTY shall perform these SERVICES in accordance with the schedule set forth in EXHIBIT "A," entitled SCHEDULE OF PERFORMANCE," attached hereto and incorporated herein by this reference, except that SERVICES on properties owned by the CITY shall be performed only upon written request by the CITY.

C. The COUNTY shall attend all meetings of the CITY Council or meetings of other CITY committees, boards or hearing bodies at which weed abatement SERVICES, refunds of weed abatement charges, or other issues related to the SERVICES or this AGREEMENT are discussed, when the COUNTY's attendance is requested by the CITY.

D. Upon request by the CITY, the COUNTY shall provide to the CITY for its review and comment the COUNTY's specifications and qualifications for contractors or other agents of the COUNTY obtained or hired by the COUNTY to perform weed abatement SERVICES on behalf of the COUNTY on properties located in the CITY.

SECTION 4. NOTICES.

The COUNTY shall prepare copies of all notices required in connection with the SERVICES and cause such notices to be posted, published, mailed, and/or distributed as required by applicable law. The COUNTY shall provide copies of such notices to the CITY for prior review and approval as set forth on EXHIBIT A, entitled "SCHEDULE OF PERFORMANCE," or where not provided for in the SCHEDULE OF PERFORMANCE, at least thirty (30) days prior to the date that the COUNTY desires or is required to post, publish, mail, or otherwise distribute the material.

SECTION 5. HEARINGS.

The CITY Council, or the committee, board, or other hearing body designated by the CITY Council to conduct hearings in connection with the PROGRAM, retains the responsibility to conduct public hearings and adopt appropriate resolutions and orders in accordance with Title V, Chapter 202 of the Milpitas Municipal Code and this AGREEMENT, including its EXHIBIT A, "SCHEDULE OF PERFORMANCE."

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SECTION 6. STATEMENT OF COSTS.

A. In December of each calendar year, the COUNTY shall deliver to the CITY a schedule of all reasonable and necessary fees and costs approved and adopted by the COUNTY Board of Supervisors for administrative, enforcement, and abatement services to be provided under this AGREEMENT ("FEE SCHEDULE"). Such fees and costs shall not exceed the reasonable costs of providing such services. All fees and costs in said FEE SCHEDULE shall be recoverable by the COUNTY pursuant to this SECTION and SECTION 7 of this AGREEMENT unless within sixty (60) days of the COUNTY's delivery of said schedule to the CITY, the City Council of the CITY expressly declines to accept any fee or cost in said FEE SCHEDULE. In the event the City Council does decline to accept any fee or cost in said FEE SCHEDULE, the COUNTY shall be relieved of any and all obligations to provide any SERVICES under this AGREEMENT for the weed abatement season associated with the disapproved fee or cost.

B. At least ten (10) days prior to the date of the public hearing before the CITY regarding the placement of special assessment liens on properties for weed abatement charges, which meeting usually occurs before August 10 of each year, the COUNTY shall render to the CITY a report of weed abatement SERVICES performed by the COUNTY on properties within the CITY during the preceding twelve (12) months ("REPORT"). The REPORT shall include, without limitation, all of the following information:

1. The total number of weed abatements performed in the CITY;

2. The total number of properties upon which weed abatements were performed in the CITY;

3. A statement of all the costs and expenses incurred by or on behalf of the COUNTY for weed abatement SERVICES performed on properties located in the CITY, itemized with the aggregate administrative, enforcement, and abatement expenses and costs incurred by the COUNTY on each property, which shall be in accord with the fees and costs in the FEE SCHEDULE submitted by the COUNTY to the CITY pursuant to Section 6.A of this AGREEMENT;

4. A description of all the properties in the CITY, by address and Assessor's Parcel Number, on which weed abatement SERVICES were performed; and

5. Verification of the truthfulness, accuracy, and completeness of the REPORT, executed by the COUNTY employee charged with the supervision of the SERVICES.

SECTION 7. PAYMENT FOR SERVICES.

A. Except as provided in SECTIONS 7.B and 7.C, the COUNTY shall be reimbursed for SERVICES provided under this AGREEMENT by remittances from property owners for weed abatement and related costs and expenses for SERVICES performed on their respective lots and parcels of land. The CITY, after hearing, shall require the costs and expenses of SERVICES performed for the current year to be entered as a special assessment on bills for taxes levied against the respective lots and parcels of land. Such special assessments shall be liens on the respective properties until paid to the COUNTY.

B. Within 60 days of receipt of an invoice for costs and expenses incurred on CITY-owned parcels, the CITY shall reimburse the COUNTY for the costs of such SERVICES. Charges for SERVICES on parcels owned by the CITY shall equal the cost of SERVICES performed by the weed abatement contractor on the CITY-owned parcels plus 20% of said contractor service costs.

C. If the amounts submitted for collection from property owners in Santa Clara County for provision of weed abatement services by the COUNTY are inadequate to reimburse the COUNTY for its fixed costs administering countywide services during the preceding twelve (12) months, the COUNTY may make a demand to the CITY for its proportional share of the shortfall (less amounts offset by accrued program revenues) by September 1 of each year. The CITY agrees to pay the COUNTY for the CITY's proportional share of any such shortfall within sixty (60) days of demand by the COUNTY. The CITY'S proportional share shall be calculated based on the percentage of parcels on which weed abatement services were performed which are located in the CITY as compared to the total number of parcels on which weed abatement services are provided. (For example, for Fiscal Year 2022, the CITY'S parcels constitute 2.5% of the total parcels. This would result in an estimated maximum share of shortfall contribution by the CITY of $16,874.73 for Fiscal year 2022.). The COUNTY's demand for payment under this SECTION 7.C. shall be accompanied by a statement of the total shortfall in the COUNTY's reimbursement for fixed program costs for the preceding twelve (12) months and of any accrued program revenues available to offset the shortfall, as well as a statement of the CITY's proportional share of that shortfall (minus offsets by accrued program revenues).

D. Except as provided in SECTIONS 7.B and 7.C., the CITY has and assumes no liability for the payment of salary, wages, benefits, pensions, compensation or any other amounts to officers, agents, employees or contractors of COUNTY performing SERVICES hereunder.

SECTION 8. INDEMNIFICATION.

In lieu of and notwithstanding the pro rata risk allocation, which might otherwise be imposed between the PARTIES pursuant to Government Code Section 895.6, the PARTIES agree that all losses or liabilities incurred by PARTY shall not be shared pro rata but, instead, COUNTY and CITY agree that, pursuant to Government Code Section 895.4, each of the PARTIES hereto shall fully indemnify and hold each of the other PARTIES, their officers, board members, employees, and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying PARTY, its officers, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this AGREEMENT. No PARTY, nor any officer, board member or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other PARTIES hereto, their officers, board members, employees, or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other PARTIES under this AGREEMENT.

SECTION 9. RECORDS.

Each officer or department of the COUNTY performing any SERVICES pursuant to this AGREEMENT shall keep itemized and detailed work or job records covering the costs of services performed under this AGREEMENT. COUNTY shall maintain these records for a minimum period of three (3) years, or for any longer period required by law, following the performance of any SERVICES.

SECTION 10. ENTIRE AGREEMENT.

This AGREEMENT and its Appendices (if any) constitutes the final, complete and exclusive statement of the terms of the agreement between the PARTIES. It incorporates and supersedes all the agreements, covenants and understandings between the PARTIES concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this AGREEMENT. No prior or contemporaneous agreement or understanding, verbal or otherwise, of the PARTIES or their agents shall be valid or enforceable unless embodied in this AGREEMENT.

SECTION 11. AMENDMENTS.

This AGREEMENT may only be amended by a written instrument signed by the PARTIES.

SECTION 12. GOVERNING LAW, VENUE.

This AGREEMENT has been executed and delivered in, and shall be construed and enforced in accordance with, the laws of the State of California. Proper venue for legal action regarding this AGREEMENT shall be in the County of Santa Clara.

SECTION 13. ASSIGNMENT.

No assignment of this AGREEMENT or of the rights and obligations hereunder shall be valid without the prior written consent of the other PARTY.

SECTION 14. 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 shall be in writing and shall apply to the specific instance expressly stated.

SECTION 15. COMPLIANCE WITH LAWS.

COUNTY and CITY shall comply with all applicable Federal, State, and local laws, regulations, rules, and policies in the performance of services under this AGREEMENT.

SECTION 16. THIRD PARTY BENEFICIARIES.

This AGREEMENT does not, and is not intended to, confer any rights or remedies upon any person or entity other than the PARTIES.

SECTION 17. INDEPENDENT CONTRACTORS.

The COUNTY and the CITY agree that this AGREEMENT is by and between independent contractors. This AGREEMENT is not intended, nor shall it be construed, to create a relationship of agent, servant, employee, partnership, joint venture, or association between the COUNTY and the CITY.

SECTION 18. TERMINATION

A. The COUNTY or the CITY may terminate this AGREEMENT as of the first day of September of any year by giving notice to the other PARTY not less than thirty (30) days prior to the date of termination.

B. The [City Manager], or his or her delegatee or designee, is authorized to terminate this AGREEMENT on behalf of the CITY.

C. The COUNTY's Agricultural Commissioner, or his or her delegatee or designee, is authorized to terminate this AGREEMENT on behalf of the COUNTY.

SECTION 19. NOTICES

Except as otherwise stated, any notice required or permitted by this AGREEMENT will be in writing and delivered as follows with notice deemed given as indicated: (a) by personal delivery when delivered personally; (b) by overnight courier upon written verification of delivery; (c) by email, telecopy, or facsimile transmission upon acknowledgment of receipt of electronic transmission; or (d) by certified or registered mail, upon confirmation of delivery. The PARTIES may deliver notice as follows:

TO COUNTY:
County of Santa Clara Consumer and Environmental Protection Agency
1553 Berger Drive #200, San Jose, CA 95112
Fax: 408-286-2460
Email: SCCweedabatement@cep.sccgov.org
Attn: Weed Abatement Manager

TO CITY:
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035
Email: smcharris@ci.milpitas.ca.gov
Attn: City Manager

SECTION 20. INTERPRETATION.

The captions preceding the sections of this AGREEMENT have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this AGREEMENT. This Agreement has been negotiated at arm's length and between parties sophisticated and knowledgeable in the matters contained herein. This AGREEMENT shall be interpreted to achieve the intents and purposes of the PARTIES, without any presumption against the PARTY responsible for drafting any part of this AGREEMENT. Provisions in this AGREEMENT relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or COUNTY holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. The Recitals are incorporated and made a part of this AGREEMENT.

SECTION 21. COUNTERPARTS.

This AGREEMENT may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

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SECTION 22. CONTRACT EXECUTION

Unless otherwise prohibited by law or COUNTY policy, the PARTIES agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the COUNTY.

THE PARTIES TO THIS AGREEMENT hereby indicate their acknowledgement and acceptance of the terms and conditions stated herein as evidenced by the following signatures of their duly authorized representatives.

COUNTY OF SANTA CLARA	**CITY OF MILPITAS**
_____	_____
Jeffrey V. Smith County Executive	Steve McHarris City Manager
Dated: _____	Dated: _____
APPROVED AS TO FORM AND LEGALITY:	APPROVED AS TO FORM AND LEGALITY:
_____	_____
Willie Nguyen Deputy County Counsel	Michael Mutalipassi, City Attorney

EXHIBIT "A"

SCHEDULE OF PERFORMANCE

The COUNTY shall perform the SERVICES as follows:

On or before November 15 of each year:	The County shall request a resolution from the CITY declaring that certain weeds located on properties in the CITY constitute a public nuisance and setting a date for a public hearing.
Before the date of the CITY governing body meeting declaring weeds a nuisance subject to abatement:	The COUNTY shall provide to the CITY for review and processing by the CITY a complete Master List of properties, including Assessor's Parcel Numbers, located in the CITY upon which hazardous weeds are growing or are likely to grow.
No later than ten (10) days prior to the day of the CITY hearing on objections to the notices to destroy weeds:	The COUNTY shall post notices to destroy weeds at property or mail notices to destroy weeds to property owners regarding the CITY hearing, as directed by resolution of the CITY Council.
No later than ten (10) days prior to the day of the CITY hearing on objections to the notices to destroy weeds:	The COUNTY shall deliver to the CITY a FEE SCHEDULE listing all reasonable and necessary fees and costs approved and adopted by the COUNTY Board of Supervisors for administrative, enforcement, and abatement services to be provided under this AGREEMENT in accordance with SECTION 6.A of this AGREEMENT.
	The CITY Council shall hold a public hearing to hear objections to and the notices to destroy weeds. By resolution at the conclusion of the hearing, the CITY Council shall allow or overrule any or all objections to the proposed abatement of weeds.
After adoption of CITY resolution ordering the abatement of weeds on certain properties as public nuisances:	The CITY shall proceed with weed abatement work on properties located in the CITY in accordance with the resolution adopted by the CITY Council and this AGREEMENT.
At least ten (10) days prior to the date of the public hearing before the CITY's governing body regarding the placement of special assessment liens on properties for weed abatement charges:	Pursuant to SECTION 6.B of this AGREEMENT, the COUNTY shall provide to the CITY for review and processing a complete and accurate REPORT of costs and expenses incurred by or on behalf of the COUNTY for weed abatement SERVICES performed in the CITY during the preceding twelve (12) months under this AGREEMENT.

On or before August 10 of each year:	The COUNTY shall obtain a resolution from the CITY to confirm the REPORT and order the weed abatement costs to be a special assessment against the affected properties.
At least ten (10) days prior to the CITY meeting to hear objections to the REPORT:	The CITY shall mail a notice to all property owners identified in the REPORT, which provides the date, time, and place of the CITY Council's hearing on the REPORT at which person may appear and object to the REPORT.
Upon adoption of resolution by the CITY Council confirming or amending REPORT and ordering weed abatement costs become a special assessment lien against the affected properties and filing of REPORT with COUNTY Auditor:	The COUNTY shall enter each such assessment on the COUNTY tax roll and cause such amounts to be collected at the same time, and in the same manner, as general CITY taxes are collected..
Upon request by CITY	The COUNTY shall perform weed abatement SERVICES on CITY-owned lots and parcels.

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Approve Delegation of Authority to the City Manager or Designee to Approve and Execute Project Related Documents and Urgent Administrative Items During the City Council Summer Recess, from the Last City Council Meeting Held in June through August 9, 2022 (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053)**
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	6/21/2022
	Recommendation: Approve delegation of authority to the City Manager, or his designee, to approve and execute project related documents, including contract documents, and urgent administrative items during the City Council summer recess from the last City Council meeting held in June through August 9, 2022.

Background

The City Council has a scheduled recess between the last City Council meeting in June and August 9, 2022, during which no regular City Council meetings will take place. In order to ensure that critical services and projects continue and are completed on time, especially related to the COVID-19 pandemic, given the recent surges in test positivity rates and cases, it may be necessary to take action during Council recess. Therefore, it is requested that the City Council authorize the City Manager or his designee, to take appropriate action during the recess.

Analysis

Authorizing the City Manager or his designee to take appropriate actions, including signing contracts within City Council's financial authority under the Municipal Code, will ensure that projects stay on schedule and that the City continues to provide vital services to the community. Deferring any actions until after the Council recess could potentially result in delayed responses to COVID-19, additional cost or delay to projects or services. A report summarizing any action taken by the City Manager or designee during the recess under this delegated authority will be presented to the City Council on August 16, 2022.

Policy Alternative

Alternative: Do not approve the requested delegation of authority

Pros: Retains Council approval authority

Cons: Will not enable timely action on urgent project and administrative needs to ensure continued provision of vital services to the community.

Reason for not Recommending: Will not allow timely action to ensure the continued delivery of services to the community and time sensitive actions on projects during the Council recess.

Fiscal Impact

Approval of any potential agreements or contracts are anticipated to be within the Council approved budget; therefore, there is no fiscal impact.

CEQA

Not Applicable

Recommendation

Delegate authority to the City Manager, or his designee, to approve and execute project related documents, including contract documents, and urgent administrative items during the City Council summer recess from the last City Council meeting held in June through August 9, 2022.

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Receive the Monthly Report for Unhoused Services (Staff Contact: Sharon Goei, Building Safety and Housing Director, 408-586-3260)**
Category:	Consent Calendar-Community Development
Meeting Date:	6/21/2022
	Recommendation: Receive the March 2022 report for unhoused services.

Background:
On November 10, 2020, the City Council approved and authorized staff to enter into an agreement for homeless outreach, assessment, and street-based case management services with Santa Clara County Office of Supportive Housing. On March 1, 2021, the County's Homeless Engagement and Access Team (HEAT), via Abode Services, began conducting outreach to engage and provide resources to the City's unhoused residents.

On December 1, 2020, the City Council directed staff to implement a six-month pilot mobile shower and laundry Dignity on Wheels program with WeHOPE. The nonprofit service provider, WeHOPE, began providing mobile shower and laundry services every Sunday starting March 21, 2021, on the site on Winsor Street, immediately south of the Milpitas Library. On September 7, 2021, the City Council directed staff to continue the mobile shower and laundry program for an additional 12 months.

This report reflects the March 2022 progress for unhoused services.

Analysis:
In March 2022, the HEAT Team continued to collaborate with City staff and County Office of Supportive Housing to conduct outreach throughout the City of Milpitas to engage and provide resources to the City's unhoused residents. The HEAT Team provided basic needs items and transportation resources. The Team continued to foster rapport with unhoused residents to provide housing and employment resources, as well as to coordinate care with the Office of Supportive Housing. During the month of March, the HEAT Team enrolled 15 clients and completed 16 assessments. Adding to 125 clients enrolled and 129 clients assessed since services began in March 2021, this makes a total of 140 clients enrolled and 145 clients assessed. Since the HEAT Team has been conducting proactive outreach throughout Milpitas, they have been able to locate and connect with unhoused residents both at known and new locations. For the unhoused individuals that did not provide identifying information for the Team to enroll or assess, the Team provided basic needs items and community resources. See Attachment 2 for the HEAT Team March 2022 report.

During the month of March, WeHOPE provided four sessions to the unhoused community, providing a total of 74 showers and 14 loads of laundry, serving 41 unduplicated individuals. See Attachment 3 for the WeHOPE Dignity on Wheels March 2022 report.

In addition to working closely with the above service providers, City departments continued to collaborate in providing assistance to the unhoused residents. Referrals to the HEAT Team continue to be provided through the City's referral process. This process has reduced internal messaging and maximized the HEAT Team's ability to quickly respond to requests for assessments and to provide updates to City staff. For a summary of the various activities and services for Milpitas unhoused residents as described above, refer to Attachment 1 for the March 2022 report for unhoused services.

Fiscal Impact:
There is no fiscal impact to the City budget other than staff time related to this item.

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:
Receive the March 2022 report for unhoused services.

Attachments:
1. March 2022 report for unhoused services
2. March 2022 HEAT Team report
3. March 2022 WeHOPE Dignity on Wheels report

MARCH 2022 REPORT FOR UNHOUSED SERVICES

	Outreach Location	Type	Jurisdiction	Unhoused Count	Date Counted	Date Referred	Clients Enrolled	Date Enrolled	Clients Assessed	Date Assessed	Clients Housed	Date Housed	Notes
1	Hillview Bridge	Encampment	Valley Water	1	3/25/2022	2/26/2021	1	3/25/2022	1	3/25/2022			
2	Topaz Street 1	Encampment	City			N/A							
3	Serra Center	Encampment	Private Property			3/26/2021							
4	Ocean Supermarket	Encampment or Outreach	Private Property			N/A							
5	Dixon Road 1	Encampment	City			3/25/2021							
6	Dixon Road 2	RV Vehicles	City			3/25/2021							
7	Calaveras Blvd Overpass	Encampment	City			3/19/2021							
8	Dempsey Road 1	Encampment	City			3/25/2021							
9	Sinclair Frontage Road	Encampment	Union Pacific Railroad			3/25/2021							
10	Yosemite Business Park	Encampment	Private Property			3/25/2021							
11	Gibraltar Court	Trailers	City			3/25/2021							
12	Topaz Street 2	Encampment	City			3/25/2021							
13	Railroad Court	Camp/Trailers	City	1	3/28/2022	3/25/2021	1	3/28/2022	1	3/28/2022			
14	Abel Plaza	Encampment	Private Property			3/25/2021							
15	S. Main Street	Encampment	City			3/25/2021							
16	S. Abbott Avenue	Encampment	City (if on street) or County (if on County property)			3/25/2021							
17	W. Calaveras Blvd	Encampment	City			3/25/2021							
18	Ethyl Court	Camp/Cars	City			3/25/2021							
19	Hammond Way	Cars/Trailers	City	2	3/2, 3/28/2022	3/25/2021	2	3/2, 3/28/2022	2	3/2, 3/28/2022			
20	Coyote Creek Trail 1	Encampment	Valley Water			3/25/2021							
21	Coyote Creek Trail 2	Encampment	Valley Water			3/25/2021							
22	Coyote Creek Trail 3	Encampment	Valley Water			3/25/2021							
23	Calaveras Plaza Shopping Center	Outreach (contact made in non-encampment setting)	N/A	4	3/8, 3/14, 3/25/2022	N/A	3	3/8, 3/14, 3/25/2022	4	3/8, 3/14, 3/25/2022			
24	Dignity on Wheels Mobile Shower and Laundry	Outreach (contact made in non-encampment setting)	N/A			N/A							
25	Dixon Landing Shopping Center	Outreach (contact made in non-encampment setting)	N/A			N/A							
26	Great Mall	Outreach (contact made in non-encampment setting)	N/A	1	3/17/2022	N/A	1	3/17/2022	1	3/17/2022			
27	Milpitas Library	Outreach (contact made in non-encampment setting)	N/A			N/A							
28	Main Street	Outreach (contact made in non-encampment setting)	N/A	1	3/29/2022	N/A	1	3/29/2022	1	3/29/2022			
29	Other (Street, Panhandle, Vehicle Dweller, or Unidentified Location)	Outreach (contact made in non-encampment setting)	N/A			N/A							
30	Dempsey Road 2	Encampment	Private Property			N/A							
31	Serra Center	Outreach (contact made in non-encampment setting)	N/A	1	3/11/2022	N/A	1	3/11/2022	1	3/11/2022			
32	E. Calaveras Blvd	Outreach (contact made in non-encampment setting)	N/A			N/A							
33	Dempsey Road 3	Outreach (contact made in non-encampment setting)	N/A			N/A							
34	Galaxy Court	Outreach (contact made in non-encampment setting)	N/A			N/A							
35	Ranch Drive	Outreach (contact made in non-encampment setting)	N/A	2	3/25/2022	N/A	2	3/25/2022	2	3/25/2022			
36	Jacklin Rd	Vehicle	City			N/A							
37	Folsom Ct	Outreach (contact made in non-encampment setting)	N/A			N/A							
38	Other (near Extended Stay)	Outreach (contact made in non-encampment setting)	N/A			N/A							
39	S. Park Victoria	Outreach (contact made in non-encampment setting)	N/A	1	3/28/2022	N/A	1	3/28/2022	1	3/28/2022			
40	O'Toole Elms Park	Outreach (contact made in non-encampment setting)	City			N/A							
41	America's Best Value Inn	Outreach (contact made in non-encampment setting)	Private Property			N/A							
42	Milpitas Sports Center Park	Outreach (contact made in non-encampment setting)	City			N/A							
43	Foothill Park	Outreach (contact made in non-encampment setting)	City			N/A							
44	Washington Road	Vehicle	City			N/A							
45	Burley Drive	Vehicle	City			N/A							
46	W. Calaveras Blvd	Outreach (contact made in non-encampment setting)	N/A	1	3/28/2022		1	3/28/2022	1	3/28/2022			
47	Albert Augustine Jr. Memorial Park	Outreach (contact made in non-encampment setting)	N/A	1	3/25/2022		1	3/25/2022	1	3/25/2022			
			Total	16			15		16				

	Session Location	Service Dates	Number of Sessions	Total Unduplicated Individuals Served	Showers Provided	Loads of Laundry Provided
WeHOPE Dignity on Wheels Mobile Shower and Laundry	Milpitas Library	3/6/2022, 3/13/2022, 3/20/2022, 3/27/2022	4	41	74	14

Santa Clara County Office of Supportive Housing
Abode Services
Milpitas HEAT Team
March 2022 Report

In March, Abode's HEAT staff continued to render outreach services across the city of Milpitas in response to referrals received from the City of Milpitas and Milpitas PD. The team was successful in locating several transient unhoused individuals, including vehicle dwellers throughout various regions of the city and referring them into the community queue for housing.

Abode's HEAT staff continued to monitor the welfare of existing participants and provided community resources, basic needs items, and weather appropriate clothing as needed. One actively enrolled participant was reassessed due to a change in circumstance that impacted that client's vulnerability.

Abode's HEAT staff continued to provide informational materials about waste disposal, safe parking, emergency shelters, and Dignity on Wheels to supplement engagement efforts. In addition, the team utilized motivational interviewing techniques when engaging with the unhoused to foster healthy life change in participants.

The team continued to coordinate care with the Office of Supportive Housing to support participants with obtaining necessary documentation for housing acquisition purposes, and addressing their mental health needs.

The following table reflects the number of outreach contacts, the total number of unhoused enrolled into the SCC HEAT program, as well as the number of VI-SPDAT assessments administered:

Milpitas HEAT Contact, Enrolled, Assessed Clients: March 2022

Outreach Location	Outreach Contact	Enrolled	Assessments
Milpitas Outreach (Vehicle Dweller)- S Main St.	**1**	**1**	**1**
03/29/2022	1	1	1
Milpitas Outreach (Vehicle Dweller) -S Park Victoria	**1**	**1**	**1**
03/28/2022	1	1	1
Milpitas Outreach - W Calaveras Blvd	**1**	**1**	**1**
03/28/2022	1	1	1
Milpitas Outreach - Railroad 9	**1**	**1**	**1**
03/28/2022	1	1	1
Milpitas Outreach (Vehicle Dweller)- Hillview Bridge	**1**	**1**	**1**
03/25/2022	1	1	1

Milpitas Outreach (Vehicle Dweller) - Albert Augustine Jr. Memorial Park	**1**	**1**	**1**
03/25/2022	1	1	1
Milpitas Outreach (Vehicle Dweller) – Ranch Dr.	**2**	**2**	**2**
03/25/2022	2	2	2
Milpitas Outreach (Vehicle Dweller)- Great Mall	**1**	**1**	**1**
03/17/2022	1	1	1
Milpitas Outreach- Calaveras Plaza Shopping Center	**4**	**3**	**4**
03/25/2022	2	1	2
03/14/2022	1	1	1
03/08/2022	1	1	1
Milpitas Outreach-Serra Center 13	**1**	**1**	**1**
03/11/2022	1	1	1
Milpitas Outreach (Vehicle Dweller)- Hammond 15	**2**	**2**	**2**
03/28/2022	1	1	1
03/02/2022	1	1	1
Grand Total	**16**	**15**	**16**

Milpitas Outreach= Contact made with client in non-encampment setting

Milpitas Encampment= Contact made at a location where a tent and/or other structures are used as shelter

Service Dates	Total Hrs	Total Unduplicated	41	Showers Provided	74
3/6/2022	12	Served during contract period	119	Loads of Laundry provided	14
3/13/2022		Total Field Visits	81		
3/20/2022		Ages		Ethnicity	
3/27/2022		>19	2	Black or African American	4
		20-29	1	White	13
		30-39	17	Asian	14
		40-49	14	American Indian or Alaskand Native	11
		50-59	17	Hawaiian or Other Pacific Islander	0
		60-69	29	Multiple Races	0
		70-79	1	Non-Hispanic/Latino	0
		>80	0	Hispanic/Latino	0
		Refused		Refused	5
		Gender		Non reported	33
		Male	72		
		Female	9		
		Trans Male	0		
		Trans Female	0		

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Adopt a Resolution Accepting and Authorizing the City Manager to Execute the 5-Year Agreement Between Hiderliter De Llamas and Associates (HdL) and the City of Milpitas, and Approving and Authorizing a Sole Source Purchase for the Procurement of HdL Prime Business License Software with Web Module Services for a 5-Year Total Cost of Approximately $123,700. (Staff Contact: Lauren Lai, Finance Director, 408-586-3111)**
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	6/21/2022
	Recommendation: Adopt a resolution accepting and authorizing the City Manager to execute the 5-Year Agreement Between Hiderliter De Llamas and Associates (HdL) and the City of Milpitas, and Approving and Authorizing a Sole Source Purchase for the Procurement of HdL Prime Business License Software with Web Module Services for a 5-Year Total Cost of Approximately $123,700.

BACKGROUND:

In 2017, the City modernized its business license software to upgrade to HdL Prime Business License Software with Web Module to offer the following enhanced services: online applications, online business registry with a searchable listing of licensed businesses in the City, online customer profiles which allows an owner with multiple businesses, or an individual responsible for reporting for multiple businesses, to keep track of the license status of all businesses from a central profile, and submit renewals for those businesses through a single process and payment transaction, and improve department approval process utilizing a centralized system and automated email notifications.

In addition, the system allows hotels/motels in the City to file and pay online the monthly Transient Occupancy Tax Report.

ANALYSIS:

On August 23, 2017, the City entered into an agreement with HdL Software LLC to provide upgraded business license software and services for the City of Milpitas. At the time, HdL was the current provider for business license software and changes to Payment Card Industry ("PCI") requirements made upgrading to HdL Prime Business License Software with Web Module a requirement. Several amendments to enhance the system were entered such as additional licenses, City staff training, upgrade that creates a nightly data file sent to the City's Information Technology Department for GIS location purposes, and software configuration and report development necessary to incorporate the City's Police Alarm Permit process.

This is a 5-year renewal agreement for a total cost of $123,699.93, detailed cost breakdown per year as follows:

Year 1:	$21,085.46
Year 2:	$22,772.29
Year 3:	$24,594.07
Year 4:	$26,561.59
Year 5:	$28,686.52

HdL is a Sole Source provider of business license software. Per Municode section; I-2-3.03 - Procurements where competitive methods are not practicable and I-2-3.06 - Sole Source Procurement authorizes that "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, materials, equipment, or general service, or that there is a compelling reason for using only one source. The Purchas

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.

HdL currently provides this software. Switching to a new provider at this junction would be costly, and interruptive for both, City operations and the business license holders and hotel operators who have learned the HdL system implemented since 2017.

Note: First year cost is actual. Subsequent years costs are projected with 8% increase annually but will be billed at actual CPI for All Urban Consumers, West Region, reported annually by the U.S. Bureau of Labor Statistics. The CPI annual increase is limited to 2% minimum and 8% maximum.

POLICY ALTERNATIVE(S):

Alternative 1: Do Not Approve the 5-Year Renewal Agreement with HdL Software LLC

Pros: Cost savings by not authorizing the 5-year renewal agreement

Cons: Lose all the benefits of the enhancements made to the system for efficiencies and reduce customer service.

Reason for Not Recommending: HdL currently provides this software that is used by City departments and business operators. If we do not renew our software agreement with HdL or switch to a new provider, it would be costly and interruptive to the City and business operators, who have learned the HdL system implemented since 2017.

FISCAL IMPACT:
There are sufficient funds available in the FY2022-2023 operating budget of the Information Technology Department to cover the cost. Funding for the remaining years of the agreement will be subject to annual appropriation.

California Environmental Quality Act (CEQA):
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:
Adopt a resolution accepting and authorizing the City Manager to execute the 5-year agreement between Hideliter de Llamas and Associates; and approving and authorizing a sole source purchase for the procurement of HdL Prime Business License Software with Web Module Services for a total amount not-to-exceed amount of $123,699.93.

Attachment(s):
1. Resolution
2. Sole Source Justification
3. SaaS Agreement with Hiderliter De Llamas and Associates (HdL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS ACCEPTING AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE 5-YEAR AGREEMENT BETWEEN HIDERLITER DE LLAMAS AND ASSOCIATES (HdL) AND THE CITY OF MILPITAS, AND APPROVING AND AUTHORIZING A SOLE SOURCE PURCHASE FOR THE PROCUREMENT OF HdL PRIME BUSINESS LICENSE SOFTWARE WITH WEB MODULE SERVICES.

WHEREAS, Th City entered into an agreement with Hdl on 8/23/2017 and City of Milpitas is currently utilizing the HdL Prime Business License Software with Web Module application for its annual Business License Application filing and payment; and monthly Transient Occupancy Tax filing and payment; and

WHEREAS, HdL Prime Business License Software with Web Module was developed by HdL Software, LLC and are distributed solely by HdL Software, LLC. No other vendor develops, distributes and implements these products and services; and

WHEREAS, Municode Section; I-2-3.03 - Procurements where competitive methods are not practicable and I-2-3.06 - Sole Source Procurement authorizes that "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; and

WHEREAS, HdL currently provides this software. Switching to a new provider at this junction would be costly, operationally interruptive and interruptive for the business license holders and hotel operators who have learned the HdL system implemented since 2017.

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 approves Hiderliter De Llamas and Associates as the sole source provider for the procurement of HdL Prime Business License Software with Web Module.

3. The City Council hereby approves the procurement of the HdL Prime Business License Software with Web Module services from Hiderliter De Llama and Associates and authorize the City Manage, or his designee to execute the 5 years agreement and related documents for the procurement in the amount of $123,699.93.

PASSED AND ADOPTED this on _____ day of _____, 2022 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Wendy Wood, City Clerk

APPROVED:

_____
Rich Tran, Mayor

APPROVED AS TO FORM:

_____
Michael Mutalipassi, City Attorney

CITY OF MILPITAS
SOLE SOURCE OR
SOLE BRAND (STANDARDIZATION) REQUEST

THIS FORM MUST BE COMPLETED AND APPROVED
PRIOR TO ANY PROCUREMENT

When a request is made for a sole source procurement or to restrict procurement to a specific brand (standardization) for the acquisition of supplies, equipment and materials or services (except for consultant services or contracts with other governmental agencies), as applicable, the requesting department must complete this form consistent with Section I-2-3.06 - Sole Source Procurement or Section I-2-3.14 - Standardization.

Per the aforementioned Municipal Code section, a sole source contract is authorized 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 detailed information you are providing will facilitate such a determination.

Per the aforementioned Municipal Code section, a standardization of supplies, materials or equipment, including information and communication technology products and services and subsequent sole brand procurement is authorized, when 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. 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; and/or (7) Administrative costs.

This form is not necessary for contracting for professional services or contracting with other governmental agencies.

Please answer in the space provided, or in an attachment address by specific reference, each question listed below in your justification. Be sure to answer each part of each question as each must be addressed; no response can be not applicable. Failure to respond fully to any of the questions may result in delay or rejection of the request due to inadequate justification. If additional information is necessary, please attach additional page(s) and/or documents, as needed.

1. This is a request for a (circle one) Sole Source Sole Brand exception.

2. Using appropriate detail, including brand name and model number, ***briefly*** describe the product you wish to procure. In the case of a general service use enough detail to clearly describe to someone not familiar with your department's operation what you are procuring.

   HdL currently provides the City of Milpitas with its HdL Prime Software system for business license on-line application and payment, and for Transient Occupancy Tax on-line filing and payment.

   3. Please provide the total not-to-exceed amount of the purchase and/or agreement/contract as well as the requested term. (if buying software, the City's standard term is five years)

   Total Cost: $ **123,699.93** Term: ***5 years***

   Detailed cost breakdown explanation per year:
   Year 1: ***$21,085.46***
   Year 2: $22,772.29
   Year 3: $24,594.07
   Year 4: $26,561.59
   Year 5: $28,686.52

   Note: *First year cost is actual. Subsequent years costs are projected with 8% CPI increase annually but will be billed at actual CPI for All Urban Consumers, West Region, reported annually by the U.S. Bureau of Labor Statistics. CPI annual increase is limited (capped) to 2% minimum and 8% maximum.*

4. For goods: What are the unique performance features of the product/brand requested that are not available in any other product/brand? For services: What unique qualifications, rights, degrees, certifications, licenses and/or experience does this vendor possess?

   HdL currently provides our HdL Prime Software system for business license application, transient occupancy tax filing and payment, and police alarm permit. If we do not renew our software agreement with them, we will not be able to take on-line business license application

and payments, and monthly transient occupancy tax filing and payment on-line. HdL is the sole provider of this software.

What other products/services have been examined and rejected, and why? *(Please provide a specific meaningful explanation, one vendor and one feature at a time.* For products be sure to clearly identify the product by name and model number and **include the name, address, email, and telephone number of the company representative whose product you tested.)**

We did not test any other products. Municode Section; I-2-3.03 - Procurements where competitive methods are not practicable and I-2-3.06 - Sole Source Procurement authorizes that "A contract may be awarded without competition when the Purchasing Agent determines in writing, … "*that there is a compelling reason for using only one source*". Switching to a new provider at this junction would be costly, operationally interruptive and interruptive for the business license holders and hotel operators who have learned the HdL system implemented since 2017.

If justification is based on matching and/or intermixing with existing equipment (standardization or sole brand only – (sole brand may only be used by authority of the City Council)), list the quantity, manufacturer, brand, and model of the existing equipment, and identify measurable cost savings consistent with the sole brand requirements identified on page one of the request form (attach calculations as necessary).

Not Applicable

I HEREBY CERTIFY THAT:

1. I have read and understand the City's requirements for competitive bidding, as well as the criteria for justification for sole source and sole brand procurements.
2. I have gathered the required technical information and have made a concentrated effort to review comparable and/or equal equipment/service.
3. There is validity as to the information contained herein justifying my request for sole source or sole brand procurement and meeting the City's criteria.
4. A sole source or sole brand procurement in this case would withstand a possible audit or a vendor's protest.

Requestor: Gabrielle Tsang, Assistant Finance Director_____Date: June 9th, 2022

Department Head: _____Date:

PURCHASING DIVISION USE ONLY:

APPROVED: Yes No

Purchasing Agent: _____Date:

Purchasing Agent's Written Determination:

SOLE SOURCE OR SOLE BRAND REQUEST

A. OVERVIEW

Purchasing recognizes that departments often invest a great deal of time and effort in selecting a source or brand, prior to submitting a requisition to Purchasing. Even though the departmental review process prior to the submittal of a requisition may be sound, it is highly recommended to quickly engage with Purchasing as soon and early in the process as possible to ensure all documentation and justifications for the request are consistent with the Municipal Code.
Likewise, Purchasing can be an effective partner in a competitive review process given adequate time and involvement in your requirement definition.

In an effort to expedite sole source or sole brand requisitions through Purchasing, you are directed to review the Sole Source or Sole Brand Request form herein. If the Department feels the request meets the criteria, follow the instructions in filling out the form and attach it to the requisition. After review, if Purchasing concurs with your sole source or sole brand justification, the requisition may be expedited without the competitive solicitation requirements.

This is an internal City review process. Departments are directed to use discretion in their discussion with vendors so as to not compromise any competitive advantage that Purchasing may utilize; in the event the sole source or sole brand justification is rejected. Rather than merely a shift of the review burden, this process acknowledges the significant effort a department may undertake when identifying a vendor or brand and provides you with the method by which to make requisitioning efforts more efficient adhering to the City's Purchasing Ordinance.

In order for Purchasing to accept a request for sole source/sole brand, the certification form referenced is made a part of the Purchasing Agent's written determination as provided by the Municipal Code must be signed by the Department Head. The completed form will remain on file for audit purposes.

Sole Source Requests Over $100,000

Sole Source requests over $100,000 require submission of an Agenda Report Sample - Sole Source Agenda Report and approval by City Council and require submission of a resolution as in the Sample - Sole Source Resolution. If you are making a second sole source purchase, over $100,000, within the five-year life of the original sole source purchase you are still required to submit an AR to City Council, and at a minimum, the report should confirm the findings in the prior sole source resolution are still accurate and that nothing has changed in the marketplace or elsewhere. If anything has changed, then a new resolution is required. If

nothing has changed, then the Department can rely on the prior resolution but should include language in the AR indicating that all previous findings and conclusions are still accurate, and staff is not aware of any new information that would change those findings or conclusions in the prior sole source resolution.

B. PROCEDURE Sole source or sole brand procurements are an exception to competitive solicitation requirements and, therefore, require a detailed justification. In processing sole source or sole brand requests for supplies, equipment and/or services (except for consultant services or contracts with other governmental agencies) , Purchasing adheres to and is governed by the principles set forth in City of Milpitas Municipal Code Section I-2-3.06 - Sole Source Procurement or Section I-2-3.14 - Standardization as approved by the City Council.

If the requesting Department is requesting a particular vendor, brand or product, staff must make this fact clear on your requisition. If approved, the request will then be restrictive and non-competitive and will fall into a sole source or sole brand category.

Such a request should not be made unless Department staff is confident that the request is reasonable and appropriately justified to meet the City's requirements and withstand any possible audit or scrutiny. The City's requirements and the format for submitting such requests are contained herein.

The following factors DO NOT apply to sole source requests and should not be included in any sole source and/or sole brand justification request. They will not be considered and only tend to confuse the evaluation process and delay the procurement.

1. Personal preference or experience with or for a particular product or vendor.

2. Cost, vendor performance, and/or local service (these are generally considered award factors in competitive bidding).

3. Features which exceed the minimum department requirements.

4. Explanation of the need and/or basic use for the equipment, unless the information relates to a request for "unique factors" (refer to question three from the Sole Source/Sole Brand Request form). In other words, it is not appropriate to only state the Department is requesting a specific tree trimmer so staff can trim trees, instead explain why this particular trimmer with these exact performance specifications is the only one that will meet the Department's need(s).

5. A request for "no substitution" submitted without justification. This is just a sole source or sole brand request without justification and will be rejected

SOFTWARE AS A SERVICE AGREEMENT
BETWEEN THE
CITY OF MILPITAS AND HIDERLITER DE LLAMAS AND ASSOCIATES

This Software as a Service Agreement (hereinafter referred to as "Agreement") is entered into as of this day of_____ , (the "Effective Date") by and between the CITY OF MILPITAS, a California municipal corporation ("City"), and **Hinderliter De Llamas and Associates**, a California corporation having a principal place of business at **120 S. State College Blvd., Suite 200, Brea, CA 92820** ("Provider").

RECITALS

A. Provider is the owner of its proprietary software that the City has selected to use for the City's **Business License and Transient Occupancy Tax Applications** .

B. Provider represents and warrants that it is qualified to provide the Software as a Service Application and perform the Services as set forth under this Agreement.

C. Provider desires to grant to City and City desires to obtain from Provider a nonexclusive license to use the Software as a Service Application and obtain the services in accordance with the terms and on the conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Use of the SaaS Software. Provider shall provide City with the Software as a Service Application and services, which are described in the Provider's Proposal and attached hereto as Exhibit "A" and incorporated herein by reference ("SaaS Software"). The specifications, performance and functionality of the SaaS Software shall comply in all respects with the requirements set forth in the Provider Proposal and any documentation for the SaaS Software ("Functional Requirements"). Subject to the terms and conditions of this Agreement, Provider hereby grants City and Authorized Users a renewable, irrevocable (except as set forth herein), non-exclusive, royalty-free, and worldwide license to access, display, and execute the SaaS Software and related documentation during the Term of this Agreement and any renewals thereof, if any.

2. Services. Provider shall further provide City with implementation, project management, and training services in connection with the implementation of the SaaS Software as further described in Exhibit "A" ("Services").

3. Compensation.

   a. Subject to paragraph 3(b) below, the City shall pay for the SaaS Software, including the related Services, in accordance with the schedule of costs set forth in Exhibit "A."

   b. In no event shall the total amount paid for the SaaS Software and Services, rendered by Provider under this Agreement exceed the sum of **One Hundred Twenty-Three Thousand Six Hundred Ninety-Nine Dollars and Ninety-Three Cents ($123,699.93)** unless there is a change in the scope of the SaaS Software and Services and such change is reflected in the execution of a written amendment pursuant to Section 8 of this Agreement.

   c. Payment to Provider shall be considered as full compensation for all personnel, materials, supplies, and equipment used in performing the Services.

   d. City's failure to discover or object to any unsatisfactory work or billing prior to payment will not constitute a waiver of City's right to request Provider to correct such work or billings or seek any other legal remedy.

4. Term and Termination.

   a. Term. The term of this Agreement shall commence on **July 1, 2022** and expire on **June 30, 2027**, unless earlier terminated as otherwise provided herein.

   b. Options to Renew. The City has **Zero** options to renew the Agreement for a period of **Zero** each. The City may extend this Agreement beyond the expiration date by exercising an option at the City's sole and absolute discretion and by modifying this Agreement as provided in Section 8.

   c. Termination

      (i) Termination for Breach by Either Party. Either party may terminate this Agreement upon written notice to the other party, if the other party breaches a material term of this Agreement and such breach remains uncured for thirty (30) days after the other party's receipt of such notice.

      (ii) Termination for Non-Appropriation. City's payment obligation under this Agreement extends only to funds appropriated annually by City's governing body for the purpose of this Agreement. For each succeeding fiscal period covered by this Agreement, City's applicable department responsible for this Agreement agrees to include in its budget request appropriations sufficient to cover the annual financial obligations under this Agreement. However, City's governing body has no obligation to make appropriations for the Agreement in lieu of appropriations for new or other contracts. If City is appropriated insufficient funds to continue annual payments under this Agreement, City may terminate this Agreement by giving Provider not less than thirty (30) days' prior written notice. Upon termination under this paragraph, Provider shall be entitled to compensation for all SaaS Software Services rendered prior to the effective termination date. Provider's assumption of risk of possible non-appropriation is a part of the consideration for the Agreement. This Section controls against any and all other provisions of the Agreement.

(iii) Termination for Convenience. City may terminate this Agreement at any time without cause upon ninety (90) days' prior written notice to Provider. No refund of amounts paid by City shall be provided upon termination for convenience.

d. Effect of Termination or Expiration.

(i) City will pay Provider all amounts payable hereunder as of the termination or expiration date or Provider shall provide a prorated refund of amounts paid by City where termination occurs for breach by Provider prior to the first twelve (12) months of the Term;

(ii) all rights and licenses granted hereunder to City (as well as all rights granted to any Authorized Users of City) will immediately cease, including but not limited to all use of the SaaS Software; and

(iii) City will, upon written request of Provider, either return to Provider or provide Provider with written certification of the destruction of, all documents, computer files and other materials containing any Confidential Information of Provider that are in City's possession or control.

(iv) Return of Data. Upon expiration or termination of this Agreement for any reason, and regardless of whether there is any dispute relating to the Agreement, Provider will provide City with all City Data in Excel or SQL Server format. Thereafter, upon written instruction of City, Provider and any of its third-party contractors shall completely destroy or erase all copies of City Data in any form.

5. Maintenance and Support Services. Following the warranty period for the SaaS Software, Provider has agreed to make maintenance and support services for the SaaS Software available to City in accordance with the terms of the **Provider Services**, which is attached hereto as **Exhibit "A."** The SaaS Software Support and Maintenance Provisions contain mutually agreed upon pricing for such services, which pricing shall remain in effect for so long as City makes the payments set forth in Exhibit "A."

6. Data and Security

a. Ownership of City Data. "City Data" means all data, information, content and other materials stored or transmitted by City and any Authorized User through the SaaS Services. The Parties agree that as between them, all rights, including all intellectual property rights, in and to the City Data and any derivative works of the City Data is the exclusive property of the City. City shall have access to City Data 24-hours a day, 7 days a week. Provider warrants that City shall be able to extract City Data from the SaaS Application on demand, but no later than 24-hours of City's request, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees to Provider). Provider shall retain and preserve City Data in accordance with the City's instruction and requests, including without limitation any retention schedules and/or litigation hold orders provided by the City to Provider, independent of where the City Data is stored.

b. Use of City Data. Provider agrees to hold City Data received from or created on behalf of the City in strictest confidence. Provider shall not use or disclose City's Data except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Access to City's Confidential Information must be strictly controlled and limited to Provider's staff assigned to this project on a need-to-know basis only. Provider is provided a limited non-exclusive license to use the City Data solely for performing its obligations under the Agreement and not for Provider's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data, including user tracking within the system, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data by Provider, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

c. Data Security. To prevent unauthorized access to City Data or City Confidential Information, Provider shall establish and maintain a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (i) ensure the security and confidentiality of the City Data; (ii) protect against any anticipated threats or hazards to the security or integrity of the City Data; (iii) protect against unauthorized disclosure, access to, or use of the City Data; (iv) ensure the proper disposal of City Data; and, (v) ensure that all of Provider's employees, agents, and subcontractors, if any, comply with all of the foregoing.

d. Payment Card Industry ("PCI") Requirements. Providers providing services and products that handle, transmit or store cardholder data, are subject to the following requirements: Provider is responsible for the security of cardholder data possessed by it or its third party transaction processor (if any). Provider shall comply with (or if applicable, shall ensure its third party transaction processor complies with) and maintain all applicable PCI DSS requirements. Provider (or its third party transaction processor, if applicable) shall submit to the City on an annual basis a PCI DSS Attestation of Compliance and/or Report of Compliance promptly upon City's reasonable request.

e. Data Breach; Loss of City Data. "Data Breach" means any access, destruction, loss, theft, use, modification or disclosure of City Data by an unauthorized party or that is in violation of the Agreement terms and/or applicable local, state or federal law. "SaaS Software Error" means any failure of SaaS Software to conform in all material respects to the requirements of this Agreement or Provider's published specifications or documentation. In the event of any Data Breach, SaaS Software Error, omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of City Data or the physical, technical, administrative, or organizational safeguards put in place by Provider that relate to the protection of the security, confidentiality, or integrity of City Data, Provider shall, as applicable:

(i) Notify City immediately following discovery, but no later than twenty-four (24) hours, of becoming aware of such occurrence or suspected occurrence;

(ii) Keep the City informed regularly of the progress of its investigation;

(iii) As rapidly as circumstances permit, apply appropriate resources to remedy the breach condition, investigate, document, restore City service(s) as directed by the City, and undertake appropriate response activities to correct, remediate, or to mitigate potential damage;

(iv) In the case of personally identifiable information (PII) or protected health information (PHI), at City's sole election, (a) notify the affected individuals as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; or, (b) reimburse City for any costs in notifying the affected individuals. Provider's responsibility for the costs of providing such notifications shall not be limited by any disclaimer or limitation of liability in the Agreement;

(v) Perform or take any other actions required to comply with applicable law as a result of the occurrence.

7. Contract Documents. The following documents shall govern the performance of the Scope of Work and the terms and conditions for the provision of the SaaS Software and Services (collectively, the "Contract Documents"):

   a. This Agreement;

   b. Provider Proposal (Exhibit "A"); and

   c. City Insurance Requirements (Exhibit "B").

   In the event of any conflict between the terms and conditions of the Contract Documents, the Contract Documents shall govern in accordance with the foregoing order of priority with this Agreement acting as the master agreement. No "click to accept" agreement may be required for the City and/or Authorized Users' access to the SaaS Services.

8. Additional Work; Amendments. If changes in the Project and the Contract Documents seem merited by Provider or the City, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the City by Provider with a statement of the estimated changes in the Provider Proposal. An amendment to the Agreement shall be prepared by the City and executed by both parties before any change becomes binding upon City. Provider acknowledges that any material amendment to the Contract Documents, particularly with respect to the schedule of charges in the Provider Proposal, may be subject to approval by the City Council. Such amendment shall not render ineffective or invalidate unaffected portions of the Contract Documents.

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

10. Notice to Proceed. The obligations of Provider to commence performance shall by triggered by Provider's receipt of notice from the City to proceed. Thereafter, Provider

shall proceed in accordance with the Project Schedule. The Notice to Proceed shall set forth the date of commencement of the Project Schedule.

11. Delays in Performance.

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

    b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance under the Contract Documents. It is not intended by the parties that any such delay shall extend for a period in excess of sixty (60) days.

12. Confidentiality. Provider understands and agrees that, in the performance of the work or services under this Agreement may involve access to City Data that is Confidential Information. Provider agrees to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third-parties other than its employees, agents, or authorized subcontractors who have a need to know in connection with this Agreement or to use such Confidential Information for any purposes whatsoever other than the performance of this Agreement. Provider and any subcontractors or agents shall use Confidential Information only in accordance with all applicable local, state and federal laws restricting the access, use and disclosure of Confidential Information and only as necessary in the performance of this Agreement. Provider's failure to comply with any requirements of local, state or federal laws restricting access, use and disclosure of Confidential Information shall be deemed a material breach of this Agreement, for which City may terminate the Agreement. Provider agrees to advise and require its respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Provider will not disclose any Confidential Information of City except as compelled by a court or administrative body or required by any law or regulation. Provider will give notice if any disclosure request is received for City's Confidential Information, so City may file an objection with the relevant court or administrative body.

13. Compliance with Law.

    a. In carrying out its obligations under the Contract Documents, Provider shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements and requirements for verification of employees' legal right to work in the United States.

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

    c. Provider is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance"

projects ("Prevailing Wage Laws"). If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is $1,000 or more, Provider agrees to fully comply with such Prevailing Wage Laws. Provider shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Provider 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 Section 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.

d. 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 Provider and all subconsultants performing such Services must be registered with the Department of Industrial Relations. Provider shall maintain registration for the duration of the Agreement and require the same of any subconsultants, as applicable. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Provider's sole responsibility to comply with all applicable registration and labor compliance requirements. 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.

e. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Provider's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Provider or any subconsultant that affect Provider's performance of Services, including any delay, shall be Provider's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Provider caused delay and shall not be compensable by the City. Provider 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 Provider or any subconsultant.

14. Warranty

a. SaaS Software Warranty. Provider warrants that the SaaS Software will conform in all material respects to the Functional Requirements for a period of twenty-four (24) months ("Warranty Period") following the date upon which the SaaS Software has completed user acceptance testing and is placed in use by City in a live

production environment ("Go-Live"). Provider agrees to correct or replace, at no charge, any nonconformity of which it receives notice during the Warranty Period. In addition, Provider warrants that any customization and/or error correction to the SaaS Software will conform in all material respects to the Functional Requirements. This warranty is void if the City or any other third party intentionally changes or modifies the SaaS Software without the permission of Provider.

b. Malware. Provider warrants that the SaaS Software shall not contain any lock, counter, CPU reference, virus, worm, or other malware or device capable of halting operations or erasing or altering data or programs. Provider further warrants that neither it, nor its agents, employees, or subcontractors shall insert any shutdown device following delivery of the SaaS Software (or any hardware).

c. Service Warranty. Provider warrants that all Services provided under this Agreement will be performed in a professional, competent and workmanlike manner in accordance with the Project Schedule. City shall notify Provider in writing of any breach of this warranty no later than ninety (90) days following Go-Live. Provider shall further provide a sufficient number of properly trained and competent staff to carry out the Services in a skilled and professional manner consistent with the best practices in the SaaS Software industry and in compliance with the Project Schedule.

d. Remedies. Provider covenants that it will make corrections of program malfunctions or errors which are reported in writing to Provider during the Warranty Period and which are necessary for the SaaS Software to conform to the warranties set forth in Section 14 of this Agreement. City agrees to allow Provider the opportunity to make repeated efforts within a thirty (30) day time period to correct programming errors or malfunctions as warranted in this Agreement. Provider agrees that program malfunctions that result in an inoperable system resulting in a financial impact to the City, or inefficient work-around, will be given its highest priority with the problem corrected as soon as practicably possible, consistent with a high priority item under the SaaS Software Support and Maintenance Provisions, using its most experienced and knowledgeable resources. Provider will strive to have any and all malfunctions resolved within no more than five calendar days.

15. Acceptance Testing; Final Acceptance. All SaaS Software and Services shall be subject to acceptance testing by City to verify, to its reasonable satisfaction, that each deliverable conforms to the requirements of a particular phase or milestone as set forth in the Exhibit "A" hereto or with respect to the SaaS Software, that it conforms to the Functional Requirements in all material respects and does not contain errors. City and Provider will agree on a reasonable testing methodology for the SaaS Software. Acceptance testing will not begin for any deliverable until sufficient data, as reasonably determined by City, has been converted and loaded into the SaaS Software or component thereof to enable City to test the functionality of the SaaS Software or any component thereof in a test environment that approximates a live production environment. If City determines that any SaaS Software deliverable or Services do not conform with the foregoing requirements, City shall promptly deliver to Provider a notice of non-conformity, and Provider shall work diligently to correct all nonconformities free of charge to City by issuing one or more error corrections or re-performing the defective Services. Each error correction shall be subject

to additional acceptance testing by City. Notwithstanding the acceptance of any deliverable by City, such deliverable shall remain subject to the warranty obligations of Provider for the entire Warranty Period. "Final Acceptance" shall occur ninety (90) days after Go-Live provided that the SaaS Software is operating properly in accordance with all of the Functional Requirements and there are no material warranty issues that adversely impact the ability of City to operate the SaaS Software.

16. Assignment and Subcontractors. Provider shall not subcontract, assign or transfer this Agreement or any rights under or interest in the Contract Documents without the written consent of the City, which may be withheld for any reason at the sole discretion of the City. Nothing contained herein shall prevent Provider from employing independent contractors, as well as employees, to provide Services as Provider may deem appropriate, provided, however, that Provider shall remain fully responsible for such independent contractors.

17. Independent Contractor.

    a. Provider enters into this Agreement as an independent contractor and not as an employee of the City. The Provider shall have no power or authority by this Agreement to bind the City in any respect. Nothing in this Agreement shall be construed to be inconsistent with this relationship or status. All employees, agents, contractors or subcontractors hired or retained by the Provider are employees, agents, contractors or subcontractors of the Provider and not of the City. The City shall not be obligated in any way to pay any wage claims or other claims made against Provider by any such employees, agents, contractors subcontractors, or any other person resulting from performance of this Agreement.

    b. Provider agrees it has satisfied itself by its own investigation and research regarding the conditions affecting the work to be done and labor and materials needed, and that its decision to execute this Agreement is based on such independent investigation and research.

18. Integration. The Contract Documents represent the entire understanding of the City and Provider as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises or representations with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by both parties hereto. This is an integrated Agreement.

19. Title to SaaS Software. Provider represents and warrants that it is the sole owner of the SaaS Software or, if not the owner, that it has received all legally required authorizations from the owner to license the SaaS Software as contemplated herein, has the full power to grant the rights required by this Agreement, and that neither the SaaS Software, nor its use in accordance with the Contract Documents, will violate or infringe upon any patent, copyright, trade secret, or any other property rights of another person or City.

20. Infringement and Performance Breach Remedies. If it is claimed that any work furnished by Provider, whether first developed by Provider for the City or not, infringes any intellectual property right or is otherwise unlawful, Provider agrees to defend or settle any such claim or suit at Provider's expense and to indemnify and hold the City harmless from any losses, damages or harm, including attorney's fees and legal expenses, incurred as a result of such claim. Without the City's prior written approval, Provider shall not accept any liability on the City's behalf for the infringement, nor shall Provider reach a settlement that from the City perspective impairs the value or usefulness of the work that is the subject

of the infringement claim. Provider will also pay all damages and costs that by final judgment, settlement or other resolution are assessed against the City due to such alleged or proven infringement and reimburse the City for any direct damages suffered by the City as a result of the infringement claim, including but not limited to attorney's fees. Should Provider find, or be found, to have infringed on any intellectual property rights, Provider will procure; (i) a right for the City to continue using the applicable SaaS Software or Work Product, (ii) a solution to mitigate the infringement, or (iii) a product to replace the infringing product that provides the functionality and complies with the specifications contained in the Contract Documents. The City shall not incur any additional costs related to the aforementioned remedies.

21. Indemnification. Provider shall indemnify, defend (with counsel approved by City), and hold harmless the City, its officers, officials, agents, and employees (collectively, the "Indemnitees") from and against any and all claims, damages, demands, liability, costs, losses and expenses, (all of the foregoing collectively "Claims"), including without limitation court costs and reasonable attorneys' fees, which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, Provider's performance pursuant to this Agreement, including without limitation, Claims arising on account of injury to or death of persons or damage to property. City does not and shall not waive any rights against Provider which City may have pursuant to this Section because of Provider's provision of insurance policies required by this Agreement. Provider's obligations to defend and indemnify the City shall survive the expiration or termination of this Agreement. Provider shall not be required to indemnify City for Claims arising from the sole negligence or willful misconduct of the Indemnitees.

22. Conflicts of Interest.

    a. Provider covenants that neither it, nor any of its employees, agents, contractors, or subcontractors has any present interest, nor shall they acquire any interest, direct or indirect, in the subject of the Agreement, nor any other interest which would conflict in any manner or degree with the performance of its Services hereunder.

    b. Provider shall make all disclosures required by the City's conflict of interest code in accordance with the category designated by the City, unless the City's Contract Administrator determines in writing that Provider's duties are more limited in scope than is warranted by the category designated by the City code and that a narrower disclosure category should apply. Provider also agrees to make disclosure in compliance with the City conflict of interest code if, at any time after the execution of this Agreement, City determines and notifies Provider in writing that Provider's duties under this Agreement warrant greater disclosure by Provider than was originally contemplated. Provider shall make disclosures in the time, place and manner set forth in the conflict of interest code and as directed by the City.

23. Liability of Provider. Provider shall be responsible for performing the services under this Agreement in a manner which is consistent with the generally-accepted standards of the Provider's profession and shall be liable for its own negligence and the negligent acts of its employees, agents, contractors and subcontractors. The City shall have no right of control over the manner in which the work is to be done but only as to its outcome, and shall not be charged with the responsibility of preventing risk to Provider or its employees, agents, contractors or subcontractors.

24. Insurance.

a. Provider will comply with the "Insurance Requirements" of City which are attached hereto as Exhibit "B" and included as a part of this Agreement.

b. No limitation on liability contained in the Contract Documents shall apply to any third party claim for personal injury or wrongful death arising from the negligent acts or willful misconduct of either party, its agents or assigns. Furthermore, no limitation on liability applicable to Provider shall apply to any third party claim that the SaaS Software infringes upon the intellectual property rights of another party, nor to the obligation of Provider to deliver the SaaS Software and Services in accordance with the Scope of Work and Provider's warranty obligations.

25. Laws, Venue, and Attorneys' Fees. This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in a state or federal court situated in the County of Santa Clara, State of California.

26. Documents. Provider shall deliver to City no less than one (1) full set of documentation, manuals, and training materials for the SaaS Software. City shall have the right to copy such documents and materials for its own internal use of the SaaS Software.

27. Project Manager. Provider shall assign **George Bonnin** as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

28. Notice. Any notice or instrument required to be given or delivered by this Agreement may be given or delivered in person or sent via commercial overnight delivery or by certified mail, addressed to each party at the address set forth below or such other address for which a party has given notice in accordance with this section. Notice will be effective upon receipt, or within five (5) days of delivery.

City:	**Provider:**
City of Milpitas 455 E. Calaveras Blvd. Milpitas, California 95035 Attn: City Manager	Hinderliter De Llamas and Associates 120 S. State College Blvd., Suite 200 Brea, CA 92820 Attn: George Bonnin

29. City Not Obligated to Third Parties. City shall not be obligated or liable for payment hereunder to any party other than the Provider.

30. Non-Discrimination. Provider shall not discriminate in any way against any person on the basis of race, color, religious creed, national origin, ancestry, sex, sexual orientation, age, physical handicap, medical condition or marital status in connection with, or related to, the performance of this Agreement.

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

32. Unauthorized Aliens. Provider hereby promises and agrees to comply with all the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. § 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Provider so employ such unauthorized aliens for performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Provider hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

33. Wage Theft Prevention.

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

b. BY SIGNING THIS AGREEMENT, PROVIDER 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 PROVIDER OR ITS SUBCONTRACTORS HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. PROVIDER FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS EITHER FULLY SATISFIED EACH JUDGMENT, DECISION OR ORDER, OR, IF ANY JUDGMENT, DECISION OR ORDER HAS NOT BEEN FULLY SATISFIED, PROVIDER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) IS CURRENTLY SATISFYING SAID JUDGMENT, DECISION OR ORDER THROUGH A PAYMENT OR ALTERNATIVE PLAN APPROVED BY THE APPLICABLE COURT/GOVERNMENT AGENCY AND THAT PROVIDER OR ITS SUBCONTRACTOR(S) ARE IN COMPLIANCE WITH SAID PLAN AS OF THE DATE OF EXECUTING THIS AGREEMENT.

c. If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that Provider or a subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or Provider learns of such a judgment, decision, or order that was not previously disclosed in its bid/proposal, Provider 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. Provider or its subcontractor(s) shall, within thirty (30) calendar days after notifying the City, either (i) fully satisfy any such judgment, decision, or order and provide the City with documentary evidence of satisfying said judgment, decision or order; or (ii) provide the City documentary evidence of a payment or other alternative plan approved by the court/government agency to satisfy the judgment, decision or order. If the Provider or its

subcontractor is subject to a payment or other alternative plan, the Provider or its subcontractor shall continue to submit documentary evidence every thirty (30) calendar days during the term of the Agreement demonstrating continued compliance with the plan until the judgment, decision or order has been fully satisfied.

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

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

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

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

35. Counterparts. This Agreement and any exhibits, amendments or renewals hereto may be executed in a number of counterparts, and each counterpart signature, when taken with the other counterpart signatures, is treated as if executed upon one original of this Agreement or any amendment or renewal. A signature by any party to this Agreement provided by facsimile or electronic mail is binding upon that party as if it were the original.

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

CITY OF MILPITAS
Approved By:

_____
Steven G. McHarris, City Manager

_____
Date

Approved As To Form:

_____
Michael Mutalipassi, City Attorney

Approved:

_____
Lauren Lai, CPA, MPA
Finance Director / Risk Manager

HIDERLITER DE LLAMAS AND ASSOCIATES

_____
Signature

_____
Name

_____
Title

_____
Date

EXHIBIT A
SAAS SOFTWARE SERVICES

The following provides the scope of Services and Fees for Consultant's local tax software maintenance services for the City's Business License Tax and Transient Occupancy Tax Applications. For purposes of this Exhibit A, Provider is referred to as "Consultant" and City is referred to as "Client."

SERVICES

Consultant will provide the following Maintenance Services relative to Consultant's local tax software solution.

1. **Software Support**

1.1. **Client Support -** Consultant will provide Client's users no charge support by telephone, email and the web during the term of this Agreement. In the United States support is available as follows: For customer support between the hours of 8:00 am and 5:00 pm Pacific time, Monday through Friday, email support@hdlcompanies.com or call (909) 861-4335 and ask for software support. For urgent off hours support before 8:00 am or after 5:00 pm Pacific time, Monday through Friday (or anytime Saturday), email 911@hdlcompanies.com and Consultant's on call support personnel will be notified.
Please only include your name, agency and contact # in emails to 911@hdlcompanies.com. You will be contacted as soon as possible.

1.2. **Response Time** – In the event that Client encounters an error and/or malfunction whereby the software does not conform to expected behavior in accordance with the software design, Consultant will assign one of the following severity levels and render support services in a timely manner consistent with the urgency of the situation.

1.2.1. **Severity Level 1** – a critical problem has been encountered such that the software is essentially inoperable and without a reasonable workaround. Consultant will respond within one (1) business hour to diagnose the problem. A response is defined as an email or call to the Client's designated support contact. Consultant and Client will work diligently and continuously to correct the problem as quickly as possible.

1.2.2. **Severity Level 2** – a problem has been encountered that does not prevent use of the software, but the software is not operating correctly. Consultant will diagnose the problem within 48 hours and advise Client of any available work-around. Upon Consultant's confirmation that the software is not operating correctly, Consultant will provide a software update to repair the defect and confirm with Client that the update resolved the issue.

1.2.3. **Severity Level 3** – a minor problem has been encountered. The software is usable but could be improved by correction of a minor defect or addition of a usability enhancement. HdL will assess the request within fifteen (15) business days and, depending on priorities, schedule a software update for a future release, advise City that the request will not be implemented, or offer the option of implementing the request as a custom software enhancement at additional cost.

1.3. **Support Policy Regarding Reports -** Consultant will assist with modifications to reports as needed during the term of this agreement. Typical report modifications require 7 to 10 business days to complete. Very complex reports or reports required in a very short time frame may incur development costs, in which case an estimate will be provided for approval before the work is begun.

1.4. **Software Upgrades -** Except to the extent that upgrades of the software include new modules or features not previously offered as part of the software as of the date hereof, Client is entitled to upgrades of the software within the terms of this Agreement. Though rare, additional costs may

apply depending on the extent of the upgrade. Potential additional costs include training, consulting, configuration, or other requested services.

1.5. **Outside Connections to Consultant Database –** Consultant's software relies on the integrity of the database to operate properly. As such, it is critical that any outside connection to the database be implemented with Consultant's full knowledge and participation. Only "read only" connections will be established to Consultant's database. No modifications will be made to the Consultant database, including database/table design and data content. Any repair work necessary due to violations of the above items will not be covered by the Software Use Fee, and as such will be billable to the client on a time and material basis. The Client shall contact Consultant for instructions if any added functionality is required, including reading additional data or writing to the Consultant database.

1.6. **Out of Scope Support** – Client agrees to pay additional hourly fees according to Consultant's then current hourly rates if the Client desires Consultant's assistance for matters which are not caused by any defects in Consultant's software.

1.7. **Software Hosting Services** – Consultant's hosting services offload the majority of IT concerns to Consultant's hosting team; including system upgrades, hardware and software maintenance, database management, and disaster recovery. Client will be responsible for maintaining its workstations and a reliable internet connection. Consultant will handle the rest. Website functionality will be hosted using a Client specific sub-domain on Consultant's special purpose hdlgov.com domain.
1.7.1. **Workstation Specifications** – Workstations will access the software through a remote application session with Consultant's hosting service. All workstations require 4+GB Memory, 1280x1024 screen resolution, and MS Windows 7/8/10 operating system.
1.7.2. **Network Specifications** – Consultant's hosted service requires reliable, high speed internet connectivity. High-speed local area network connections are always helpful, but the service will also run without difficulty over slower WAN connections such as T1 or mobile broadband.
1.7.3. **Printer Specifications -** The software is designed to work with laser printers. A PCL compliant laser printer is recommended. Each make and model of printer has different drivers and therefore has slightly different results when printing. We design forms/reports using HP LaserJet printers.

2. **Online Payment Processing –** Consultant's software is bundled with PCI compliant payment gateway services powered by FIS Global, which supports both credit card and eCheck transactions. If a different payment gateway is required there will be a programming cost to establish the custom payment gateway integration.

2.1. **Payment Processing -** Consultant shall provide its Services to support payments remitted to Client. Consultant shall transmit transactions for authorization and settlement through Consultant's certified payment processor. Funds for transactions processed by Consultant hereunder shall be submitted to Client's designated bank account as follows: (i) no more than two (2) business banking days after all Transactions (other than electronic Check Transactions) that are successfully processed prior to 5:00 p.m. ET on each business banking day (e.g., a Transaction authorized at 2:00 p.m. ET on Monday will be submitted on Wednesday; a Transaction successfully processed at 8:00 p.m. ET on Monday will be submitted on Thursday); and (ii) no more than five (5) business banking days for all electronic Check Transactions that are successfully processed prior to 5:00 p.m. ET on each business banking day. Consultant makes no representation or warranty as to when funds will be made available by Client's bank.
2.2. **Support -** Consultant shall provide Client with payment processing related customer service as needed. Client shall timely report any problems encountered with the service. Consultant shall promptly respond to each report problem based on its severity, the impact on Client's operations and the effect on the service. Consultant shall either resolve the problem or provide Client with the information needed to enable the Client to resolve it.

2.3. **Transaction Errors -** Consultant's sole responsibility for any Transaction error or reversed Transaction is to determine whether the result indicates a problem with Consultant's service and, if necessary, reprocess and resubmit the Transaction without additional charge. In the event that a Transaction is reversed or refunded to any Customer of Client, for any reason, Consultant may offset such amount against funds remitted to Client, or invoice Client for such amount, at Consultant's discretion. Client shall pay any such invoice within 30 days of receipt.
2.4. **Electronic Check Authorization -** If Client elects to accept electronic Checks as a form of payment, the following subsections apply. For the purpose of this section, "checks" means checks drawn on accounts held in the U.S. ("Check(s)").
2.4.1. As part of the implementation plan, Client shall select risk management controls governing Check acceptance and assumes sole responsibility for the choice of controls.
2.4.2. Consultant shall provide confirmation on a submitted ABA number as part of the Service to assist Client with the decision whether to accept a Check and shall route accepted Checks.
2.4.3. Client hereby authorizes Consultant to debit the Client's financial institution account in the amount of any returned item that is received by Consultant.

2.5. **Client Responsibilities**

2.5.1. As a condition to its receipt of the Service, Client shall execute and deliver any and all applications, agreements, certifications or other documents required by Networks or other third parties whose consent or approval is necessary for the processing of Transactions. "Network" is an entity or association that operates, under a common service mark, a system which permits participants to authorize, route, and settle Transactions among themselves, including, for example, networks operated by VISA USA and Mastercard, Inc., NYCE Corporation, American Express, and Discover.
2.5.2. Client represents, warrants, and agrees that it does and will comply with applicable Laws and regulations and Network rules, regulations or operating guidelines. Client shall notify Consultant in writing as soon as possible in the event a claim is either threatened or filed against Client by any governmental organization having jurisdiction over Client or a Customer related to the Service. Client shall also notify Consultant in writing as soon as possible in the event a claim is either threatened or filed against Client relating to Transactions or the Services or a fine or other penalty is assessed or threatened relating to Transactions or the Services.
2.5.3. Client represents, warrants and agrees that it is and will continue to be in full compliance with all applicable requirements of the Client Information Security Program of VISA, the Site Data Protection Program of MasterCard, and similar programs of other Networks, and any modifications to such programs that may occur from time to time. Upon the request of Consultant, Client shall provide Consultant with documentation reasonably satisfactory to Consultant verifying compliance with this Section.
2.5.4. Client hereby grants Consultant the full right, power and authority to request, receive and review any Data or records reflected in a Transaction report. Client represents and warrants that it has the full right and authority to grant these rights.

FEES

3. **Recurring Costs**

Item	*Price*	*Comments*
Annual Software Use and Hosting Services	Year 22/23 $21,085.46 Year 23/24 $22,772.29 Year 24/25 $24,594.07 Year 25/26 $26,561.59 Year 26/27 $28,686.52	Billed Annually + CPI [1]

[1] Amounts listed here for years 2023/24 and beyond include 8% CPI each year **only for budgeting purposes.** Actual CPI may be higher or lower.

3.1. **Software Use Fee** – Software Use Fee is billed annually and provides for ongoing customer support and updates to the software. Fee will be increased as of January 1st of each calendar year with reference to the 12-month percent change in the most recently published annual Consumer Price Index for All Urban Consumers (CPI-U), West Region, ID: #CUUR0400SA0 as reported by the U.S. Bureau of Labor Statistics (the "CPI Change"). Each annual increase in the Fees will be equal to the greater of two percent (2%) or the actual CPI Change and the lesser of eight percent (8%) or the actual CPI Change. For example, if the actual CPI Change is 1.5%, then the annual increase will be 2%, if the actual CPI Change is 3.5%, then the annual increase will be 3.5%, and if the actual CPI Change is 12%, then the annual increase will be 8%.
3.2. **Customizing Services** – The Software is a customizable off the shelf system (COTS), and has been designed to meet certain issues faced by government entities. Should the need occur, Consultant is available to provide custom enhancements to the Software on a Programmer hourly Fee and material basis. No such Services shall be performed without Client's prior written approval.
3.3. **Hourly Fees -** Fees for performing the hourly Services described above and as may otherwise be provided pursuant to this Schedule shall be based on the following initial hourly rates: (i) Principal - $325; (ii) Programmer - $295; (iii) Senior Analyst - $245; and (iv) Analyst - $195.

4. **Payment Processing Services**
4.1. **Payment Processing Model** – At the option of the Client, Consultant will configure payment processing Services to utilize a taxpayer funded model (convenience fee) and/or a Client funded interchange pass-through model. Following a reasonable advance written notice to Consultant, Client may switch between these models.
4.1.1. **Taxpayer Funded -** Fees for this Services model are as follows. (Client authorizes Consultant to collect each convenience fee).

Item	*Fees*
TAX PAYER PAYS: *Credit and Debit Cards processing*	2.9%, minimum of $2.00
ACH/eCheck processing	$1.25 per transaction
ACH/eCheck Returns	$10.00 per event
Chargebacks	$25.00 per event
CLIENT PAYS: *Payment Account Hosting and Maintenance*	$33.26 per month

4.1.2. **Client Funded** – Fees for this Service model are as follows

Item	*Fees*
Credit and Debit Cards processing	2.9% + $0.30 per transaction
ACH/eCheck processing	$0.50 per transaction
Payment Account Hosting and Maintenance	$33.26 per month
ACH/eCheck Returns	$10.00 per event
Chargebacks	$25.00 per event

4.2. Consultant reserves the right to review and adjust all payment processing (Client-funded and convenience fee model) pricing under Section 4.1 on an annual basis in June. This adjustment may be consistent with the then most recent ECI adjustment or three percent (3%) whichever is greater. Items that

will be considered in the review of payment processing fees may include, but are not limited to: regulatory changes, card association rate adjustments, card association category changes, bank/processor dues and assessments, average consumer payment amounts, and card type utilization.

5. **Payment Schedule**

5.1. Any travel and lodging expenses are billed at cost as they are incurred. Such expenses shall be due within 30 days of the billing date.

5.2. Recurring software service fees will be invoiced each year on the anniversary of the effective date of the Agreement, and shall be due within 30 days of the invoice date.

5.3. Payment processing service fees and any hourly fees are invoiced monthly for the prior month's activity, and shall be due within 30 days of the invoice date.

EXHIBIT "B"

INSURANCE REQUIREMENTS

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

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

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

Provider or Consultant shall furnish City with copies of original endorsements affecting coverage required by this Exhibit B. 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 Provider's or Consultant's insurer to provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

Commercial General Liability (CGL):

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

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

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

Automobile Liability:

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

___ Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), with limits no less than $5,000,000.00 combined single liit 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 Provider or Consultant, regardless of where the vehicles are kept or driven.

Professional Liability (Errors and Omissions):

_X__ Insurance appropriates to the Provider or Consultant's profession, with limit no less than $1,000,000.00 per occurrence or claim, $2,000,000.00 aggregate.

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

___ Insurance appropriates to the Provider or Consultant's profession, with limit no less than _____ per occurrence or claim, _____ aggregate

Workers' Compensation Insurance:

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

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

Builder's Risk (Course of Construction):

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

Contractor's or Consultant's Pollution Legal Liability:

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

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

Cyber Liability Insurance

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

Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Provider or Consultant in this Agreement and shall include, but not be limited to, claims involving

infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, and network security.

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

Surety Bonds:

Provider shall provide the following Surety Bonds:

____ Bid Bond
____ Performance Bond
____ Payment Bond

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

Other Insurance Provisions:

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

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

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

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

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

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

_X__ Notice of Cancellation, Suspension or Otherwise Voiding Policies:

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

_X__ Waiver of Subrogation:

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

___ **Completed Operations**

For Construction Agreements, Provider 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 Provider 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 Provider.

THE FOLLOWING PROVISIONS APPLY TO ALL AGREEMENTS

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

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

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

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

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

Acceptability of Insurers:

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

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

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

2. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of contract of work.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Provider or Consultant must purchase “extended reporting” coverage for a minimum of five (5) years after completion of work.

4. A copy of the claims reporting requirements must be submitted to the City for review.

5. If the services involve lead-based paint or asbestos identification/remediation, the Provider’s Pollution Liability Policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Providers Pollution Liability Policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Subcontractors:

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

Subcontractor agrees to be bound to Provider and City in the same manner and to the same extent as Provider 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:

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

Special Risks or Circumstances

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

Failure to Comply:

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

Applicability of Coverage:

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

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Waive the Second Reading and Adopt Ordinance No. 38.845 Amending Sections of Chapter 10 of Title XI and Sections of Chapter 100 of Title V of the Milpitas Municipal Code Relating to Mobile Food Vending (Food Trucks) (Staff Contact: Ned Thomas, Planning Director, 408-586-3273)**
Category:	Consent Calendar-Community Development
Meeting Date:	6/21/2021
	Recommendation: Move to waive the second reading and adopt Ordinance No. 38.845 amending sections of Chapter 10 of Title XI and Section of Chapter 100 of Title V of the Milpitas Municipal Code relating to mobile food vending (Food Trucks).

Background:
This Ordinance was introduced at the June 7, 2022 City Council meeting. The Ordinance is now ready for its second reading and adoption.

Fiscal Impact:
The City will collect application fees for any Minor Site Development Permits, Special Event Permits, or Conditional Use Permits required under the regulations established by the proposed amendments to the Milpitas Municipal Code. City staff reviews permit applications on a cost-recovery basis, and the amount of fees collected will depend upon the number of applications received, which is unknown at this time.

California Environmental Quality Act:
The proposed ordinance would enact new regulations for mobile food vending to promote the safe and orderly operation of food trucks in appropriate locations of the city. It would require City staff review of proposed mobile food vending operations to ensure that these uses comply with standards and requirements intended to protect public health and safety and to avoid potential nuisances and negative impacts associated with food trucks. It would apply standards to mobile food vending that are comparable to or more stringent than those that apply to other temporary or permanent land uses regulated under the City's Zoning Code. Therefore, it can be seen with certainty that there is no possibility that the ordinance in question would have a significant effect on the environment.

Accordingly, adoption of the proposed Ordinance is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15183 (Projects Consistent with a General Plan) and 15061(b)(3) (Common Sense Exemption).

Recommendation:
Move to waive the second reading and adopt Ordinance No. 38.845 amending sections of Chapter 10 of Title XI and Chapter 100 of Title V of the Milpitas Municipal Code relating to mobile food vending (food trucks).

Attachments:
1. Ordinance No. 38.845

REGULAR

NUMBER: **38.845**

TITLE: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING SECTIONS OF CHAPTER 10 OF TITLE XI AND SECTIONS OF CHAPTER 100 OF TITLE V OF THE MILPITAS MUNICIPAL CODE RELATING TO MOBILE FOOD VENDING AND MAKING FINDINGS OF CEQA EXEMPTION**

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of June 7, 2022, upon motion by Vice Mayor Montano and was adopted (second reading) by the City Council at its meeting of _____, upon motion by _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

_____

Wendy Wood, City Clerk

_____

Rich Tran, Mayor

APPROVED AS TO FORM:

_____

Michael Mutalipassi, City Attorney

RECITALS AND FINDINGS:

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

WHEREAS, California Government Code Section 65800 et seq. authorizes the adoption and administration of zoning laws, ordinances, rules and regulations by cities as a means of implementing the General Plan; and

WHEREAS, mobile food vehicles, also commonly known as food trucks, have become increasingly common and popular in recent years, and Milpitas has experienced an increase in the number of mobile food vehicles operating or seeking to operate in the city; and

WHEREAS, mobile food vehicles provide a valuable service that is enjoyed by Milpitas residents, create opportunities for small businesses, and contribute to active, interesting and vibrant neighborhoods in the city; and

WHEREAS, the Planning Department currently has written standards for the operation of mobile food vehicles, which are not regulatory and do not have the force of law; and

WHEREAS, the City's Zoning Ordinance, Chapter 10 of Title XI of the Milpitas Municipal Code, does not currently include regulations for mobile food vending or mobile food vehicles; and

WHEREAS, the City wishes to enact appropriate regulations applying to mobile food vehicles that encourage their operation in Milpitas while also maintaining public safety, health and welfare and avoiding negative impacts from the operation of mobile food vehicles; and

WHEREAS, the City has prepared a Zoning Amendment ("Amendment") to the City's Municipal Code, including adding a new Section 13.18 ("Mobile Food Vending") to Title XI, Chapter 10–Zoning; refinements to Subsection 4.02 ("Residential Use Regulations"), Subsection 5.02 ("Commercial Use Regulations"), Subsection 6.02 ("Mixed Use Regulations"), Subsection 7.02 ("Industrial Use Regulations"), Subsection 10.02 ("Institutional Use Regulations"), Subsection 15.04 ("Special Events and Activities – Definitions"), Subsection 39.03 ("POS Park and Public Open Space District – Conditional Uses"), and Subsection 53.09 ("Off-Street Parking Required by Land Use") of Title XI, Chapter 10–Zoning; and refinements to Subsection 10.11 ("Unlawful Parking–Peddlers, Vendors") of Title V, Chapter 100–Traffic, of the Municipal Code; and

WHEREAS, on February 24, 2021, the Planning Commission for the City of Milpitas held a lawfully noticed public hearing to solicit public comment and consider the proposed Amendment, take public testimony, and make a recommendation to the City Council on the project; and

WHEREAS, on April 5, 2022, the City Council of the City of Milpitas held a study session to consider the proposed Amendment and to provide comments and direction to Planning Department staff; and

WHEREAS, this ordinance is exempt from the California Environmental Quality Act, Public Resources Code Section 21000, *et seq*. ("CEQA"), each as a separate and independent basis, pursuant to CEQA Guidelines Section 15183 (projects consistent with the General Plan) and Section 15061(b)(3) (no possibility of significant environmental effect).

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. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Based on its review of the entire record, including the staff report, public comments and testimony presented to the Planning Commission and City Council, and the facts outlined below, the City Council hereby finds and determines that this ordinance is categorically exempt from the California Environmental Quality Act ("CEQA") under CEQA Guidelines, § 15061(b)(3), also known as the "common sense exemption", which exempts from CEQA any project where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. A "significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project. This Ordinance would introduce new regulations for mobile food vending to promote the safe and orderly operation of food trucks in appropriate locations of the city. It would require City staff review of proposed mobile food vending operations to ensure that these uses comply with standards and requirements intended to protect public health and safety and to avoid potential nuisances and negative impacts associated with food trucks. It would apply standards to mobile food vending that are comparable to or more stringent than those that apply to other temporary or permanent land uses regulated under the City's zoning code. Therefore, it can be seen with certainty that there is no possibility that this Ordinance would have a significant effect on the environment; accordingly, this Ordinance is exempt from CEQA review.

Moreover, the City Council hereby finds that the introduction and adoption of this Ordinance is categorically exempt from CEQA pursuant to CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning). Section 15183 of the CEQA Guidelines provides that projects that are consistent with a Community Plan, General Plan or Zoning for which an EIR has been certified "shall not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site." The Land Use Element of the City's General Plan includes policies and guidelines related to promoting economic development and small business opportunities and allowing diverse land uses that create lively neighborhoods with amenities for residents and workers. The proposed ordinance would implement such policies by allowing mobile food vending as a type of small business and as an amenity for consumers. Therefore, the proposed Amendment is consistent with the General Plan. Therefore, the proposed Amendment is consistent with the General Plan and is exempt from CEQA pursuant to Section 15183 of the CEQA Guidelines.

Accordingly, this Ordinance is exempt from CEQA review pursuant to Sections 15061(b)(3) and 15183 of the CEQA Guidelines, each as a separate and independent basis.

SECTION 3. GENERAL PLAN CONSISTENCY

The proposed zoning amendments support several of the guiding principles and policies of the General Plan. Specifically, allowing mobile food vending is consistent with policies and guidelines in the Land Use Element related to economic development, job creation and supporting local business opportunities. This ordinance regulating mobile food vending is also aligned with the General Plan objective to allow land uses that provide community amenities. Therefore, the proposed Amendment is consistent with the General Plan.

SECTION 4. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE V, CHAPT SECTION 10

Title V, Chapter 100, Section 10 (Stopping, Standing and Parking), Subsection V-100-10.11 (Unlawful Parking – Peddlers, Vendors) of the Milpitas Municipal Code is hereby amended to read as follows:

V-100-10.11 – Unlawful Parking – Peddlers, Vendors

10.11-1 Except as otherwise provided in this section, no person shall stand or park any vehicle, wagon or push-cart from which goods, wares, merchandise, fruits, vegetables or foodstuffs are sold, displayed, solicited or offered for sale or bartered or exchanged, or any lunch wagon or eating car or vehicle, on any portion of any street within this City, except that such vehicles, wagons or push-carts may stand or park only at the request of a bona fide purchaser for a period of time not to exceed ten (10) minutes at any one place. The provisions of this Subsection shall not apply to persons delivering such articles upon order of, or by agreement with a customer from a store or other fixed place of business or distribution.

~~10.11-2 Deleted by Ord. 43.139.~~
~~10.11-3 Deleted by Ord. 43.139.~~
~~10.11-4 Deleted by Ord. 43.139.~~

~~10.11-5 It shall be unlawful to sell, display, solicit or offer for sale, barter or exchange or otherwise peddle or vend any goods, wares or merchandise (including, but not limited to wearing apparel, flowers or foodstuffs) from the sidewalk, curb or street (and whether on foot or from any vehicle, wagon or cart, or otherwise) at any of the following locations within the City of Milpitas:~~

~~1. Abbott Avenue from Spence Avenue to Calaveras Boulevard~~

~~2. Abel Street (Entire)~~

~~3. Calaveras Boulevard/SR-237 from and including the western City Limit to Coyote Creek to and including its intersection with Carnegie Drive~~

~~4. Capitol Avenue from Abel Street to the south City Limits~~

~~5. Dixon Landing Road (Entire)~~

~~6. Dixon Road from Milpitas Boulevard to Arizona Avenue~~

~~7. Jacklin Road from Milpitas Boulevard to and including Park Victoria Drive~~

~~8. Landess Avenue those portions within the City of Milpitas~~

~~9. Main Street from Curtis Avenue to south City Limits~~

~~10. McCarthy Boulevard (Entire)~~

~~11. Milpitas Boulevard (Entire)~~

~~12. Montague Expressway (Entire)~~

~~13. Park Victoria Drive from Ayer Street to south City Limits~~

~~14. Serra Way (Entire)~~

10.11-~~6~~2 Application

(a) The provisions of V-100-10.11-5 shall be applicable to any vehicle, wagon or push-cart, to which V-100-10.11-1 applies.
(b) The provisions of this Section V-100-10.11 shall not apply to mobile food vehicles as defined in Section XI-10-13.18(B).

SECTION 5. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 4

Title XI, Chapter 10, Section 4 (Residential Zones and Standards), Subsection XI-10-4.02 (Residential Use Regulations), Table XI-10-4.02-1 (Residential Zone Uses) of the Milpitas Municipal Code is hereby amended to read as follows:

XI-10-4.02 - Residential Use Regulations

Table XI-10-4.02-1
Residential Zone Uses

Use	R1	R2	R3	R4	R5
1. Commercial					
Commercial services [1,2]	NP	NP	C	C	C
2. Professional Offices and related uses					
Offices [1,2]	NP	NP	C	C	C
3. Public/Quasi-Public and Institutional Uses					
Child care center	C	C	C	C	P
Nursing home [3]	NP	C	C	C	C
Park, playground or community center (non-profit)	C	C	C	C	C
Parking lots	C	C	C	C	C
School (not trade or vocational)	C	C	C	C	C
Places of Assembly	C	C	C	C	C
4. Residential Uses					
Condominiums and condo conversions	NP	SFR: C Duplex: C	C	C	C
Duplex (Two dwellings)	NP	P	NP	NP	NP

Use	R1	R2	R3	R4	R5
Group dwelling	NP	NP	NP	C	C
Guest house	C	NP	NP	NP	NP
Manufactured home [4]	P	P	NP	NP	NP
Multi-family dwellings (Three or more units)	NP	NP	P	P	P
Planned unit development [5]	P	P	P	P	P
Accessory dwelling unit [6]	P	SFR: P Duplex: P	P	P	P
Single-family dwelling	P	P	NP	NP	NP
Single-room occupancy residences [7]	NP	NP	C	C	C
Transitional and supportive housing	P [8]	P [8]	P [9]	P [9]	P [9]
5. Restaurants or Food Service					
Restaurants [1,2]	NP	NP	C	P/C	P/C
Catering establishment [10]	NP	NP	NP	NP	NP
Mobile Food Vending (individual vehicle)[11]	P[12,13,14]	P[12,13,14]	P[12,13,14]	P[12,13,14]	P[12,13,14]
Mobile Food Park	NP	NP	NP	NP	NP
Commissary [10]	NP	NP	NP	NP	NP
6. Unclassified Uses					
Agriculture ~~10~~ 15	P	P	P	NP	NP
Boarding house (three or more persons)	NP	C	C	C	C
Golf course ~~11~~ 16	C	C	C	NP	NP
Live work units ~~12~~ 17	NP	NP	C	C	C
Model home complex ~~13~~ 18	P	P	P	P	P
Short-Term Rentals ~~14~~ 19	P	P	P	P	P

[1] Refer to Subsection XI-10-4.03(A), Residential Zone Special Uses, of this Chapter, for standards.

[2] Refer to Subsection XI-10-4.03(B), Residential Zone Special Uses, of this Chapter, for standards.

[3] Licensed nursing home serving more than six persons, except when used primarily for contagious sickness, mental or drug alcohol addict cases.

[4] Refer to Subsection XI-10-13.07, Manufactured Homes, of this Chapter, for standards.

[5] Refer to Subsection XI-10-54.07, Planned Unit Developments, of this Title, for standards.

[6] In conjunction with existing or proposed legal single-family, duplex, or multi-family dwellings. Refer to Subsection XI-10-13 Accessory Dwelling Units, of this Chapter, for standards.

[7] Refer to XI-10-13.13, Special Uses, Single Room Occupancy Residences, of this Chapter.

[8] Permitted only in single family dwellings.

[9] Permitted only in multi-family dwellings.

[10] May be permitted with approval of a Conditional Use Permit for kitchens associated with a civic or community organization, such as a church or social club.

[11] Refer to Subsection XI-10-13.18, Mobile Food Vending, of this Chapter.

[12] Mobile food vending in the R1, R2, and R3 zones may be permitted in the public right-of-way as part of an approved special event. See Subsection XI-10-13.18(C)(3)(a)(i). Mobile food vending in the R4 and R5 zones is permitted in the public right-of-way upon issuance of all required City and County permits (see Subsection XI-10-13.18(H).

[13] In all residential zones, mobile food vending on private property may be permitted on a parcel having a current certificate of use and occupancy as a museum, hospital, school, or place of religious assembly and worship, provided that the mobile food vending use shall not operate more frequently than once per week and for no longer than three consecutive days.

[14] In the R1, R2, and R3 residential zones, mobile food vending shall not be permitted on a private property having a residential use. In the R4 and R5 residential zones, mobile food vending on private property having residential use may be permitted as part of an approved, on-time or recurring special event. See Subsection XI-10-13.18(C)(3)(a)(i).

~~10~~ [15] Except for the raising of animals or fowl for commercial purposes, or the sale of any products at retail on the premises.

~~11~~ [16] Except for driving tee or range, miniature course and similar uses operated for commercial purposes.

~~12~~ [17] Allowed commercial uses to be specified through the Conditional Use Permit process.

~~13~~ [18] Refer to Subsection XI-10-13.11(E), Model Home Complexes and Sales Offices, of this Chapter for temporary tract offices.

~~14~~ [19] Subject to the requirements of Subsection XI-10-13.16, Short-Term Rentals, of this Chapter.

SECTION 6. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 5

Title XI, Chapter 10, Section 5 (Commercial Zones and Standards), Subsection XI-10-5.02 (Commercial Use Regulations), Table XI-10-5.02-1 (Commercial Zone Uses) of the Milpitas Municipal Code is hereby amended to read as follows:

Table XI-10-5.02-1
Commercial Zone Uses

Use	CO	C1	C2	HS	TC
1. Commercial Uses					
Alcoholic beverage sales	C [6]	C	C	NP	C
Art/photography studio or gallery	NP	P	P	P	P
Bookstore	NP	P	P	P	P
Commercial services [1]	P	P	P	NP	P
Funeral home or mortician	NP	NP	C	C	NP

Use	CO	C1	C2	HS	TC
Furniture sales	NP	P	P	P	P
Grocery store (supermarkets)					
Within 1,000 ft. of residential zone	NP	C	C	C	C
Not within 1,000 ft. of residential zone	NP	P	P	P	P
Head/smoke/tobacco shop	NP	C	C	NP	C
Home improvement (hardware, blinds, interior decorating, etc.)	NP	P	P	C	P
Not fully enclosed operation	NP	C	C	C	C
Household appliance store [7]	NP	NP	P	P	NP
Small appliance repair	NP	NP	MCS	P	NP
Large appliance repair	NP	NP	NP	P	NP
Janitorial services	NP	NP	P	P	NP
Newsstand					
Indoor	P	P	P	NP	P
Outdoor	C	C	C	NP	C
Nursery (flower or plant)					
Indoor	NP	NP	P [2]	P	P
Outdoor	NP	NP	C	P	NP
Office supply sales (stationery, equipment)	P	P	P	P	P
Paint and wallpaper stores	NP	NP	P	P	P
Pawnshops	NP	NP	C	NP	NP
Pet stores	NP	NP	P	P	P
Printing (newspaper, publishing)	NP	NP	P	P	P
Rentals (medical supplies, costumes, party equipment, office equipment)	NP	NP	P	P	P
Retail stores, general merchandise	NP	P	P	NP	P
Tanning salon	NP	NP	P	NP	P
Thrift store [3]	NP	C	P	P	P
2. Entertainment and Recreation					

Use	CO	C1	C2	HS	TC
Adult business [4]	NP	NP	NP	P	NP
Bowling alley	NP	NP	P	P	P
Commercial athletic facilities					
Indoor	NP	C	P	P	P
Outdoor	NP	NP	NP	C	NP
Motion picture theater (See 7 below)					
Recreation or entertainment facility	NP	C	C	C	C
Shooting range, indoor	NP	NP	NP	C	NP
3. Health and Veterinarian Uses					
Animal grooming (no boarding)	NP	P	P	P	P
Hospital	C	NP	C	C	C
Kennel	NP	NP	C	NP	NP
Massage establishment [15]	NP	NP	MC	MC	MC
Massage establishment, accessory [15]	NP	NP	MCS	MCS	MCS
Medical and dental office	P	P	P	NP	P
Medical and dental clinic	P	C	C	NP	P
Medical support laboratories	P	C	C	C	C
Optician and optometrist shop	P	P	P	NP	P
Pharmacy or drug store	NP	P	P	P	P
Sauna and steam bath	NP	NP	NP	P	NP
Veterinary clinic	NP	NP	P	P	P
4. Industrial Uses [5]					
Assembly from pre-processed materials	NP	NP	C	NP	NP
Commercial fueling facility	NP	NP	NP	C	NP
Commercial laboratory	NP	NP	C	P	NP
Contractor's yards and offices	NP	NP	C	C	NP
Disinfection and extermination business	NP	NP	C	P	NP
Dry cleaning plant	NP	NP	NP	P	NP

Use	CO	C1	C2	HS	TC
Food storage locker	NP	NP	NP	P	NP
Landscape contractor	NP	NP	C	P	NP
Lumberyards	NP	NP	C	C	NP
Mini-storage complex	NP	NP	C	C	NP
Plumbing, metalworking, glassworking or woodworking	NP	NP	C	C	NP
Research & development	NP	NP	C	NP	NP
Sign sales and fabrication (Electric and neon sign, sign painting)	NP	NP	C	P	NP
Warehousing and wholesale	NP	NP	C	NP	NP
5. Lodging					
Hotel and motel	NP	NP	C	C	C
6. Professional Offices, Financial Institutions and Related Uses					
Automatic teller machines (freestanding) [6]	NP	P	P	P	P
Financial institutions (banks, savings and loans, etc.)	P	P	P	P	P
General offices (administrative and business services, real estate, travel agencies, etc.)	P	P	P	P	P
7. Public, Quasi-Public and Assembly Uses					
Auction hall	NP	NP	C	C	C
Child care					
Child care center	C	C	C	C	C
Day care school	C	C	C	C	C
Large family child care home	NP	NP	NP	NP	C
Small family child care home	NP	NP	NP	NP	C
Places of assembly	C	C	C	C	C
Cultural center	NP	NP	C	C	C
Educational institutions					
Schools, private (elementary, middle, high)	NP	NP	C	NP	C
Trade and vocational school	C	NP	P	P	C

Use	CO	C1	C2	HS	TC
Farmer's market (not including flea market)	NP	C	C	C	C
Instruction					
Group [8]	MCS	MCS	MCS	MCS	MCS
Private	P	P	P	P	P
Motion picture theater					
Indoor	NP	C	C	C	C
Outdoor	NP	NP	NP	C	NP
Parking facility, storage garage	NP	P	P	C	C
Public utilities	C	C	C	C	C
Transportation facility (taxi, limousine, etc.)	NP	NP	C	C	C
8. Restaurants or Food Service					
Banquet hall	NP	NP	C	C	C
Bar or nightclub	NP	NP	C	C	C
Catering establishment	~~NP~~C	NP	P	P	P
Restaurants	C [7]	P	P	P	P
With live entertainment/dancing	NP	NP	C	C	C
With drive-in or drive-through	NP	C	C	C	C
With ancillary on-premise beer & wine with no separate bar	NP	MC	PMC	MC	MC
Mobile Food Vending (individual vehicle) [16]	P	P	P	P	P
Mobile Food Park [16]	MC	MC	MC	MC	MC
Commissary	MC	P	P	P	MC
9. Residential Uses					
Caretaker (in conjunction with contractor's yard or mini-storage complex)	NP	NP	C	C	NP
Emergency shelters [9]	NP	NP	NP	P/C	NP
Single-room occupancy residences [10]	NP	NP	NP	C	NP
10. Vehicle Related Uses					
Auto repair (tire, oil change, smog check, etc.)	NP	NP	C	C	NP

Use	CO	C1	C2	HS	TC
Auto sales and rental, outdoor (new and used cars, RV and truck)	NP	NP	C	C	NP
Auto broker (wholesale, no vehicles on site)	MCS	MCS	MCS	MCS	MCS
Car wash	NP	NP	C	C	NP
Service stations (with or without repair or retail) [11]	C	C	C	C	C
Drive through uses (restaurants, pharmacies, etc.)	NP	C	C	C	C
11. Unclassified Uses					
Accessory structures [12]	P	P	P	P	P
Model home complex [13]	NP	NP	NP	NP	P
Mortuary or crematory	NP	NP	NP	C	NP
Radio or television station	NP	NP	C	P	NP
Temporary seasonal sales [14]	NP	P	P	P	P

[1] Refer to the definition for "Commercial Services" in Section 2, Definitions, of this Chapter.

[2] Provided that all incidental equipment and supplies, including fertilizer and empty cans, are kept within a building.

[3] Refer to XI-10-5.04, Commercial Zone Special Development Standards, of this Chapter.

[4] In accordance with the Title III, Chapter 4, Adult Business Ordinance, and Subsection 13.04, Adult Businesses, of this Chapter.

[5] For conditionally permitted uses, refer to Subsection 57.04(C) (9), Certain Industrial Uses within Commercial Districts, of this Chapter.

[6] Refer to Subsection 57.03, Site Development Permits and Minor Site Development Permits, of this Chapter.

[7] When intended to serve the occupants and patrons of the permitted use (office, etc.) and conducted and entered from within the building and provided there is no exterior display of advertising.

[8] Refer to Subsection 5.02-1, Commercial Zone Special Uses, of this Section.

[9] Refer to XI-10-13.14, Special Uses, Emergency Shelters, of this Chapter.

[10] Refer to XI-10-13.13, Special Uses, Single Room Occupancy Residences, of this Chapter.

[11] Refer to Subsection XI-10-6.02-2, Special Uses, of this Chapter, for standards. Service stations shall follow the "General development policy: Gasoline service stations, and automotive service centers" adopted by the City Council on December 19, 1995.

[12] Not including warehouses on the same site as the permitted use.

[13] No tract sign shall be permitted within 600 feet of a Santa Clara County Expressway.

[14] Refer to Section 13.11, Temporary Uses and Structures, of this Chapter.

[15] Massage establishments are subject to Title III, Chapter 6 of the Milpitas Municipal Code and Subsection XI-10-13.16 of this title. Refer to Subsection XI-10-13.16, of this Title, for special provisions for massage establishments.

[16] Refer to Subsection XI-10-13.18, Mobile Food Vending, of this Chapter.

SECTION 7. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTE SECTION 6

Title XI, Chapter 10, Section 6 (Mixed Use Zones and Standards), Subsection XI-10-6.02 (Mixed Use Regulations), Table XI-10-6.02-1 (Mixed Use Zone Uses) of the Milpitas Municipal Code is hereby amended to read as follows:

Table XI-10-6.02-1
Mixed Use Zone Uses

Use	MXD	MXD2		MXD3
		Ground Level (Facing Retail street)	Upper Floor	
1. Commercial Uses				
Alcohol beverage sales	C	C	C	C
Commercial services [1]	MCS	MCS	MCS	MCS
Grocery stores (supermarkets)	C	C	C	C
Pawnshops [2]	C	C	C	C
Pet shops	C	NP	NP	NP
Retail stores, general merchandise [3]	MCS	MCS	MCS	MCS
Tanning salons	P	P	P	P
Thrift shops (used merchandise)				
Retail	P	P	P	P
With collections	C	C	C	C
2. Entertainment and Recreation				
Commercial athletic facilities	P	P	P	P
Motion picture theater (see 6 below)				
Recreation or entertainment facility	C	C	C	C
3. Health and Veterinarian Uses				
Animal grooming (no boarding)	P	P	NP	P
Hospitals or sanitariums [4]	C	C	C	C
Massage establishment [17]	MC	MC	MC	MC
Massage establishment, accessory [17]	MCS	MCS	MCS	MCS
Medical or dental offices and clinics	P	NP	P	P

Medical support laboratories	P	P	P	P
Optician and optometrist shop	P	P	P	P
Pharmacy or drug store	P	P	P	P
Veterinarian clinic	P	P	P	P
4. Lodging				
Bed and breakfast	P	P	NP	NP
Boarding houses (3 or more persons)	C	C	C	C
Group dwellings	C	C	C	C
Hotels	C	P	P	P
Motels	C	C	C	C
5. Professional Offices, Financial Institutions and Related Uses[4]				
Financial institutions (banks, savings and loans, etc.)	MCS	NP	MCS	P
Offices [3]	MCS	NP	MCS	P
6. Public/Quasi Public and Assembly Uses				
Child care				
Child care center	C	P	C	P
Day care school	C	C	C	
Large family child care home	P	P	C	P
Small family child care home	P	P	P	P
Instruction				
Group [13]	P	NP	NP	NP
Private	P	P	P	P
Park, playground or community center [5]	O	O	O	O
Places of assembly [4]	C	C	C	C
Public utilities	C	C	C	C
Schools, private (elementary, middle and high) [4]	C	C	C	C
Theaters (Indoor)	C	C	C	C
Trade and vocational schools [4]	C	C	C	C
Transportation facilities [2]	C	C	C	C

7. Residential Uses				
Multi-family housing [7]	P	NP	P	P
Transitional and supportive housing [7]	P	NP	P	P
Accessory Dwelling Unit [19]	P	NP	P	P
8. Restaurants or Food Service				
Bar or nightclub	C	C	C	C
Brewery/Eateries [10]	MCS	MCS	NP	MCS
Catering establishments	C	C	C	C
Restaurants [2]	P/C	P/C	NP	P/C
With dancing and entertainment	C	C	C	C
With ancillary on-premise beer & wine with no separate bar	P	P	P	P
Mobile Food Vending (individual vehicle) [20]	P	P	NP	P
Mobile Food Park [20]	MC	NP	NP	MC
Commissary	MC	NP	NP	MC
9. Unclassified Uses				
Artisan Studios & Live-work units, woodworking or glassworking, plumbing or metalworking and sign shops [2]	MCS	MCS	MCS	MCS
Lobbies and entries for upper floor uses	P	P	NP	P
Model home complex [11]	P	P	P	P
Mixed use developments [12]	P	P	P	P
Planned Unit Development [13]	P	P	P	P
Temporary seasonal sales [14]	P	P	P	P
Short-Term Rentals [18]	P	NP	P	P
10. Vehicle-Related Repair, Sales and Services				
Auto sales and rental [15]	C	C	C	C
Auto broker (wholesale, no vehicles on site) [2]	MCS	MCS	MCS	MCS
Vehicle service uses [16]	C	NP	NP	C

[1] Refer to Subsection XI-10-6.02-1(B), Performance standards for certain uses, of this Chapter, for standards.

[2] Refer to Subsection XI-10-6.02-1, Special Uses, of this Chapter, for standards.

[3] Refer to Subsection XI-10-6.02-1(B) Performance standards for certain uses, of this Chapter.

[4] Refer to Subsection XI-10-6.02-2, Quasi-Public Uses, of this Chapter, for standards.

[5] For parks, playgrounds or community center owned and operated by a government agency or a nonprofit community organization.

[6] Refer to XI-10-13.14, Special Uses, Emergency Shelters, of this Chapter.

[7] Ground level residential is prohibited in the Ground Level Commercial Area as shown on the Midtown Specific Plan Land Use Map, Figure 3.1.

[8] Refer to XI-10-13.13, Special Uses, Single Room Occupancy Residences, of this Chapter.

[9] Uses serving upper-floor residential uses, such as common gathering space, lobby, and resident services, may be allowed as ground floor uses where residential uses would otherwise not be permitted.

[10] Reserved.

[11] Refer to Subsection XI-10-13.11(E), Model Home Complexes and Sales Offices, of this Chapter for temporary tract offices.

[12] Which include only permitted uses.

[13] Refer to Section XI-10-54.07, Planned Unit Developments, of this Chapter, for standards.

[14] Refer to Section XI-10-13.11(D), Temporary Seasonal Sales, of this Chapter.

[15] New and used auto, recreational vehicle and boat sales, excluding commercial vehicles, trucks, buses, vans, and farm equipment, with accessory repairs and services, only allowed if fully enclosed within a building. Bicycle and auto rental agency, excluding commercial vehicles, trucks, buses, vans, boats and RV rentals, only if fully enclosed within a building.

[16] Refer to Subsection XI-10-6.02-2, Special Uses, of this Chapter, for standards. Service stations shall follow the "General development policy: Gasoline service stations, and automotive service centers" adopted by the City Council on December 19, 1995.

[17] Massage establishments are subject to Title III, Chapter 6 of the Milpitas Municipal Code and Subsection XI-10-13.16 of this title. Refer to Subsection XI-10-13.16, of this Title, for special provisions for massage establishments.

[18] Only allowed within a dwelling unit, subject to the requirements of Subsection XI-10-13.17, Short-Term Rentals, of this Chapter.

[19] Only allowed within multi-family dwellings, subject to the requirements of Subsection XI-10-13.08, Accessory Dwelling Units, of this Chapter.

[20] Refer to Subsection XI-10-13.18, Mobile Food Vending, of this Chapter.

SECTION 8. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 7

Title XI, Chapter 10, Section 7 (Industrial Zone and Standards), Subsection XI-10-10.02 (Industrial Use Regulations), Table XI-10-10.02-1 (Industrial Zone Uses) of the Milpitas Municipal Code is hereby amended to read as follows:

Table XI-10-7.02-1
Industrial Zone Uses

Use	M1	M2	MP
1. Commercial Uses			
Adult Businesses [1]	P	NP	NP

Use	M1	M2	MP
Business support services	P	NP	P
Commercial services	P	NP	P
Janitorial services	P	NP	P
Office supplies	C	NP	C
Printing (newspaper, blueprint, publishing)	P	NP	C
Retail stores, general merchandise [2]	C	NP	C
2. Entertainment and Recreation Uses			
Billiards	C	NP	C
Commercial athletic facilities	C	NP	C
3. Health and Veterinarian Uses			
Hospitals	NP	NP	C
Kennel	P	NP	NP
Medical support laboratories	P	NP	P
Medical and dental offices and clinics [2]	P	NP	P
Veterinarian hospital	P	NP	P
4. Industrial Uses			
Assembly from pre-processed materials [3]	P	P	P
Auto assembly facility	NP	P	NP
Bottling facility	P	P	NP
Building material sales (equipment rental) [4]	NP	C	NP
Commercial fueling facility	C	C	NP
Commercial laboratory	P	P	P
Contractor's yard and offices [4]	NP	C	NP
Distribution facility	P	P	P
Freight and trucking yard [4]	NP	P	NP
Mini-storage complex	C	C	NP
Plumbing, metalworking, glassworking or woodworking	P	P	NP

Use	M1	M2	MP
Plant or facility (research & development, assembly, manufacturing, packaging, processing, repairing, etc. or materials, merchandise or products)	P	P	P
Pottery or tile manufacturing	P	P	NP
Recycling processing facility	C	C	NP
Warehousing and wholesale	P	P	P
5. Lodging Uses			
Hotels/motels	C	NP	C
6. Professional Office Uses			
Administrative, professional or research [2]	P	NP	P
Financial institutions (banks, savings and loans, etc.)	C	NP	P
7. Public, Quasi-Public and Assembly Uses			
Auditorium [5]	NP	NP	C
Conference center [5]	NP	NP	C
Vocational school	C	NP	C
Farmer's market (not including flea market) [6]	NP	NP	C
Public utilities [7]	P	P	P
Transportation facility (taxi, parcel service, armored car, etc.) [4]	NP	P	NP
Temporary Public Safety Uses [8]	C	C	C
Places of assembly [12]	C	NP	C
8. Residential Uses			
Caretaker's residence	C	C	NP
9. Restaurants or Food Service Uses			
Catering establishment	P	NP	P
Restaurants			
With on-site service of alcohol	C	NP	C
Without on-site service of alcohol	C	NP	C
With live entertainment/dancing	NP	NP	NP
Drive-in or drive-thru	C	NP	C

Use	M1	M2	MP
Mobile Food Vending (individual vehicle) [13]	P	P	P
Mobile Food Park	NP	NP	NP
Commissary	P	NP	P
10. Vehicle Related Uses			
Auto junk yard [4]	NP	C	NP
Auto repair (tire, oil change, smog check, etc.) [9]	C	P	C [10]
Service stations (with or without repair or retail) [9]	C	C	C
With car wash	NP	C	C
Vehicle sales and rental (auto, RV and truck-new and used in operable condition) [11]	C	C	C [10]
Auto broker (wholesale, no vehicles on site) [12]	MCS	MCS	MCS

[1] In accordance with the Title III, Chapter 4, Adult Business Ordinance and Subsection XI-10-13.04, Adult Businesses, of this Chapter.

[2] When found necessary to serve and appropriate to the industrial area.

[3] Assembling, packaging, or distribution from previously prepared materials, such as cloth, plastic, paper, leather, precious or semi-precious metals or stones, electric or electronic instruments and devices such as television, radios, and pharmaceutical products.

[4] When conducted wholly within a completely enclosed building or within an area enclosed on all sides with a solid wall or fence (e.g. chain link with slats) not less than eight feet in height.

[5] Shall be ancillary to the primary use or associated with business or industrial uses.

[6] Refer to Subsection XI-10-13.10, Farmers Markets, of this Chapter.

[7] Includes service facilities, electric transmission and distribution substations and public utility service centers.

[8] See Subsection XI-10-13.11(I), Temporary Public Safety Uses.

[9] Entrances to the services bays shall not be open to the street, but shall be so designed to face the rear or interior side property line.

[10] Within MP zones, rental and repair may be considered only when ancillary to new auto dealerships.

[11] Within MP zones, boat and camper sales are prohibited. Dealerships shall be on property at least three acres or greater in area.

[12] See Subsection XI-10-7.04(A)(1), Industrial Zone Special Development and Performance Standards.

[13] Refer to Subsection XI-10-13.18, Mobile Food Vending, of this Chapter.

SECTION 9. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 10

Title XI, Chapter 10, Section 10 (Institutional Zones and Standards), Subsection XI-10-7.02 (Institutional Use Regulations), Table XI-10-7.02-1 (Institutional Zone Uses) of the Milpitas Municipal Code is hereby amended to read as follows:

Table 10.02-1
Institutional Zone Uses

Use	Institutional Zone
Correctional facility	C
Educational institutions: [1]	
Public colleges or universities	O
Private colleges or universities	C
Public schools	O
Farmer's market (not including flea market)	C
Government offices and related facilities (Federal, State and Local)	C
Hospital or sanitarium (Public) [1]	C
Library (Public)	C
Medical clinic or offices (Public)	C
Catering establishment	C
Mobile Food Vending (individual vehicle) [3]	P
Mobile Food Park	NP
Commissary	MC
Museum	C
Parks	C
Public safety uses	C
Public service uses	C
Public utilities	C
Temporary seasonal sales [2]	P
Transportation facility	C

[1] State has authority over permitting process regarding public facilities.

[2] Refer to Section XI-10-13.11(D), Temporary Seasonal Sales, of this Chapter.

[3] Refer to Subsection XI-10-13.18, Mobile Food Vending, of this Chapter.

SECTION 10. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 15

Title XI, Chapter 10, Section 15 (Special Events and Activities), Subsection XI-10-15.04 (Special E Activities - Definitions) of the Milpitas Municipal Code is hereby amended to read as follows:

XI-10-15.04 - Definitions

The definitions set forth in this part shall govern the application and interpretation of this Section.

1. "Amplified Sound" means any sound created by the use of sound amplification equipment and/or performance with electric or acoustic instruments associated with a special event.
2. "Athletic Events" means a physical or endurance activity that includes but is not limited to races, runs, walkathons, bicycle tours and the like.
3. "Block Party" means a party for all the residents of a block or neighborhood, typically held on a temporarily closed City street.
4. "Business day" means any day except Saturday, Sunday and holidays observed by the City of Milpitas.
5. "Business License" means a permit issued by the City of Milpitas that allows individuals, companies, or other entities to transact and conduct business within the City limits.
6. "City Official" means an authorized officer of the City of Milpitas as appointed by the City Manager or City Council.
7. "Director" means the Director or head of the department(s) designated to issue Special Event Permits, or such other person or persons designated by the Director to fulfill the responsibilities identified as the Director's responsibilities herein.
8. "Downtown" means the main business or commercial areas within the ~~Midtown and Transit Area~~ Specific Plan districts and the Town Center Zoning District.
9. "First Amendment Event" means conduct, the sole or principal object of which is the expression, dissemination or communication by verbal, visual, literary, or auditory means of opinion, views or ideas. Expressive activity includes, but is not limited to, public oratory and distribution of literature.

~~10. "Food Truck Event" means an event where a more than three food trucks gather in one location.~~

~~11.~~10 "Indigent Natural Person" includes, but is not limited to, a person enrolled or participating in a federal or state government assistance program for low-income or indigent persons such as general assistance, CalWORKS, Medi-Cal, food stamps, Supplemental Security Income (SSI), Women, Infants and Children (WIC), U.S. Department of Housing and Urban Development (HUD) Section 8 rental housing subsidy, and other subsidized or public housing.

~~12~~11. "Indoor/Outdoor Facility Rental Agreement" means a rental agreement issued by the Recreation Services Department to conduct a special event in a park.

12. "Mobile Food Vending Event" means an event where two or more mobile food vehicles gather in one location for a period of seven consecutive days or fewer.

13. "Outside Agency" means any local, state or federal regulatory agency responsible for administering permits to allow certain activities within their purview. Outside agencies includes but not limited to other City jurisdictions, Santa Clara Valley Water District (SCVWD), Santa Clara Valley Transportation Authority (VTA), California Department of Transportation (Caltrans), California Department of Alcoholic Beverage Control, Santa Clara Country Department of Environmental Health and Santa Clara County Roads and Airports.

14. "Parade" means an organized group marching in procession on a street. Parades do not include races, runs or other athletic events.

15. "Park", for purposes of this Section, means all outdoor areas managed by the Recreation Department, which are identified as a City park by the City, made available for use by the public as a park for recreation or open space purposes, and over which the City has the right of use for such purposes. The term "park" does not include outdoor areas adjacent to community centers not otherwise located within a City park, or property owned by school districts even if the property is used by the City for recreational purposes.

16. "Paseo" means a mall designed and used for pedestrian passage between two or more parallel streets and which is owned or controlled by the City. The definition of "paseo" includes any adjacent sidewalks.

17. "Permittee" means a person, company, corporation or entity that is given a permit or permission to hold a Special Event.

18. "Permit Applicant" means a person, company, corporation or entity that applies for a permit.

19. "Plaza" means a public square or similar open area in the downtown which is owned or controlled by the City. The definition of "plaza" includes any adjacent sidewalks.

20. "Public Right-of-Way" means any street, alley, or similar parcel of land, which is deeded, dedicated, or otherwise permanently appropriated to the public for public use.

21. "Regulations" means the policies, rules and regulations mandated by the City which govern the Special Event Permit and use of City sidewalks, streets, plazas, paseos, and parks.

22. "Simple Assembly" means a gathering of persons at a park, plaza or paseo that does not include any of the following:

    a) The placement or erection of equipment or temporary structures other than one portable table and two chairs; or

    b) Activities referenced in Section XI-10-15.04(23)(c) of this Code.

    c) For purposes of illustration, a simple assembly can be a large gathering of 150 persons; no equipment or structures (other than a table and two chairs) are placed or erected; and the other activities (i.e., cooking, sale or public distribution of food and commercial merchandise) are not involved. Nothing herein prevents the use of handheld equipment, including a loudspeaker, and handheld signs at a simple assembly.

23. "Special Event" means an outdoor event that consists of any of the following:

    a) A parade or assembly consisting of persons, animals, vehicles, or any combination thereof, which is to intended to assemble or travel in unison on any street and which does not comply with applicable traffic regulations, laws, or controls;

    b) An organized assemblage of 150 or more persons at a plaza or park, or 75 or more persons on a paseo, or any assemblage that exceeds the maximum capacity of the plaza, park or paseo facility gathered for a common purpose under the direction or control of a person or organization; or

    c) An activity or event on a public right-of-way, plaza, paseo, park or private property which involves:

        i. The placement or erection of equipment or temporary structures other than one portable table and two chairs, including but not limited to a booth, tent, canopy, stage, barricade, fencing, generator, heating equipment, sound amplifier, vehicle or float;

        ii. The use of live animals, fireworks, pyrotechnics, electrical power and/or cabling, or equipment or materials that can create a risk of damage to public or private property or injury to persons;

        iii. Cooking or the sale, preparation for sale or commercial distribution of food or beverages;

        iv. The sale of commercial merchandise.

d) An activity which involves blocking off a street or other use of a street which obstructs the traffic thereon.

e) Examples of Special Events include, but are not limited to, concerts, parades, carnivals, fairs, festivals, block parties, public dances, street fairs, community events, sporting or athletic events, parties, meals, ~~food truck gatherings~~mobile food vending events, celebrations and receptions.

f) For definitions of "Major" or "Minor" Special Events, see Table XI-10-15.03-1: Review Requirements for Special Events.

24. "Special Event Permit" means a permit issued pursuant to this Section, which authorizes the holder to conduct a Special Event at a Special Event Venue in accordance with its terms and conditions. A Special Event Permit includes a Temporary Street Closure Permit, Temporary Assembly Permit, Business License, and any outside agency regulatory permits that may be required for the operations and activities for the aforementioned Special Event.

25. "Special Event Venue" means the outdoor area (i.e., private property, street, park, paseo, or plaza) for which a Special Event Permit has been issued.

26. "Street" means a public or private right-of-way used for vehicular traffic that is owned, controlled or maintained by the City. The definition of "street" includes the entire street right-of-way inclusive of any and all adjacent sidewalks.

27. "Temporary Street Closure Permit" means a permit issued by the Chief of Police of the Milpitas Police Department or designee to conduct a special event on a public street.

28. "Temporary Assembly Permit" means a permit that is issued by the City of Milpitas Fire Marshal for the temporary assembly of 50 or more people associated with a Special Event.

29. "Temporary Collection Service Agreement" means an agreement between the Permittee and City's public service provider for the trash and recycling collection.

30. "Written Request" means written, typed or email correspondence submitted by the applicant to the Director or Designee. Text messages are not included.

SECTION 11. ADDITION OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 13.18

Title XI, Chapter 10, Section 13.18 (Mobile Food Vending) of the Milpitas Municipal Code is hereby added to read as follows:

Section 13.18 – Mobile Food Vending

A. Purpose and Intent

The purpose of this section is to allow mobile food vendors to operate in appropriate areas of the city and to protect and maintain public safety, health and welfare while providing opportunities for small businesses, adding vibrancy and activity to streetscapes and neighborhoods, and expanding food access in areas underserved by brick-and-mortar restaurants.

B. Definitions

"Catering establishment" means an establishment in which the principal use is the preparation of food and meals on the premises, and where such food and meals are delivered to another location for serving and consumption.

"Commissary" means a fixed-location kitchen where food is stored and prepared for off-site vending from mobile food vehicles. Commissaries serving mobile food vendors may include shared-use commercial kitchens, private commercial kitchens, restaurant kitchens, and kitchens associated with civic and community organizations such as churches or social clubs; but do not include catering service establishments.

"Ice Cream Truck" means a motorized vehicle selling ice cream or other frozen dairy or non-dairy dessert products on streets and in other public places.

"Mobile Food Park" means a site with two or more mobile food vehicles located together on the same parcel and operating at the same time for more than seven consecutive days.

"Mobile Food Vehicle" means a motorized, wheeled vehicle or towed vehicle designed and equipped to store, prepare, serve and sell food, but which does not include ice cream trucks or mobile food vending wagons or push-carts as regulated in Milpitas Municipal Code Section V-100-10-11.

"Mobile Food Vending" means the selling or offering to sell products from a mobile food vehicle.

C. Mobile Food Vending Review Procedures

1. On Private Property

   a. One mobile food vehicle operating on a parcel, when permitted under the use regulations for the applicable zone, may be approved subject to approval of a Minor Site Development Permit (Staff Review) pursuant to Subsection XI-10-57.03(B)(2) of this Chapter.

   b. A mobile food park operating for more than seven consecutive days may be approved subject to a Minor Conditional Use Permit (Zoning Administrator Review) pursuant to Subsection XI-10-57.04(E)(2)(a) of this Chapter.

   c. Two or more mobile food vehicles operating on a parcel for a period of seven consecutive days or less shall require a Special Event Permit pursuant to Section 15 of this Chapter.

2. In Public Parks and Open Spaces

   a. One mobile food vehicle operating within a public park or open space may be approved subject to approval of a Minor Site Development Permit (Staff Review) pursuant to Subsection XI-10-57.03(B)(2) of this Chapter.

   b. Two or more mobile food vehicles operating together within a public park or open space for a period of seven consecutive days or less shall require a Special Event Permit pursuant to Section 15 of this Chapter.

   c. Mobile food parks shall not be permitted within public parks and open spaces.

3. In Public Right-of-Way

a. Mobile food vending in the public right-of-way is permitted subject to the review and appro the Milpitas Planning Department, as follows:

i. In low- and medium-density residential zoning districts R1, R2, and R3, mobile food vending in the public right-of-way may be permitted as part of a one-time or recurring special event for which a Special Event Permit has been issued pursuant to Subsection XI-10-15.07 of this Chapter, or as part of another official event authorized by the City (e.g., National Night Out).

ii. In high-density residential zoning districts R4 and R5; all commercial, industrial, mixed-use, and institutional zoning districts; and within the Specific Plan areas; mobile food vending in the public right-of-way is permitted upon issuance of all required City and County permits per Section XI-10-13.18(H).

4. Ice Cream Trucks

a. Ice cream trucks may operate on public rights-of-way in all zoning districts, including residential zones, and in public parks with no City of Milpitas Zoning permits required (i.e. permits administered under Milpitas Municipal Code Chapter XI-10 – Zoning). Ice cream trucks shall be required to obtain a City of Milpitas business license.

b. An operator of an ice cream truck proposing to vend in a stationary location on private property shall be subject to all requirements, standards, and permitting procedures in Section XI-10-13.18 that apply to mobile food vehicles.

D. Location and Siting Requirements

1. On Private Property

a. The operator of a mobile food vehicle operating on a privately owned parcel shall obtain prior written permission from the property owner and shall have an original signed copy of such permission available at all times while the mobile food vehicle is in operation on the property.

b. A mobile food vehicle shall be parked on a paved surface outside any designated fire lane and outside any parking or loading space that is required for the principal use on the property.

i. Mobile food vending operations shall not reduce the available parking on the property below the minimum number of parking spaces required to serve the existing use(s) on the lot.

ii. For a property that is nonconforming with respect to parking, mobile food vending operations shall not reduce the total existing amount of parking on the lot.

c. Unless otherwise approved pursuant to Section XI-10-13.18(G)(1), a mobile food vehicle shall be parked a minimum of 15 feet from a driveway curb cut while in operation.

2. In Public Right-of-Way

a. A mobile food vehicle operating in the public right-of-way shall be parked in a legal parking space and shall comply with all City parking regulations at all times while in operation.

b. A mobile food vehicle may only serve customers from an adjacent sidewalk or the side of the vehicle closest to the curb and shall not serve customers from the side of the vehicle closest to the motorized travel lanes of the street.

3. In Public Parks and Open Spaces

a. The location and siting of mobile food vending operations within a public park or open space shall be subject to the approval of the City of Milpitas Recreation and Community Services Department, through the Minor Site Development Permit or Special Event Permit process as required per Section XI-10-13.18(C)(2)(a) or (b).

b. A mobile food vehicle operating within a public park shall be parked in a legal parking space on a paved surface outside any designated fire lane.

4. Separation from Other Uses.

a. A mobile food vehicle in operation shall be located a minimum of 150 feet from any existing restaurant.

b. A mobile food vehicle in operation shall be located a minimum of 150 feet from a freeway on- or off-ramp.

E. Site Design Standards

1. Parking

a. For one mobile food vehicle operating on private property or in a public park, no parking shall be required to serve the mobile food vending use. The mobile food vehicle shall comply with Subsection XI-10-13.18(D)(1)(b) with respect to parking for other existing uses on a lot.

b. For mobile food parks, one parking space shall be required per 2.5 seats provided on site for customers, plus one parking space per 60 square feet of lot area dedicated to the mobile food vending operation (see Table 53.09-1). Such parking shall be provided in addition to any required parking serving other existing uses on the lot.

2. Access and Circulation

a. All mobile food vending operations shall be located so as not to impede safe movement of vehicular, bicycle or pedestrian traffic, and to maintain a clear line of sight for vehicles, bicycles and pedestrians.

b. No mobile food vehicle shall obstruct access to or circulation through any parking lot, or access to any public sidewalk or alley.

3. Seating Areas

a. For mobile food vehicles operating in the public right-of-way, on-site seating (including tables, chairs, canopies, umbrellas, or similar amenities) shall not be permitted.

b. For one mobile food vehicle operating on private property, the site plan submitted for Minor Site Development Permit review per Subsection XI-10-13.18(C)(1)(a) shall show all proposed temporary

amenities and structures for on-site seating and dining. For mobile food parks, the site plan submitted for Minor Conditional Use Permit review per Subsection XI-10-13.18(C)(1)(b) shall show all proposed temporary and permanent amenities and structures for on-site seating and dining.

c. Mobile food vending operations requiring a Special Event Permit shall be subject to the requirements and procedures in Section 15 of this Chapter for seating, dining areas and similar amenities.

4. Restrooms

a. For one mobile food vehicle operating on private property or for mobile food vehicles operating in the public right-of-way:

i. If the vehicle operates in the same location on an ongoing basis, for at least one day per week and for more than one hour on each day of operation, the operator must have access to a restroom facility within 200 feet pursuant to the Health and Safety Code Section 114315. If the vehicle operates in the same location on an ongoing basis, for at least one day per week and for more than three consecutive hours on each day of operation, the operator must arrange and secure access to a restroom within 200 feet of the site that is available to customers and employees of the mobile food vehicle.

ii. A mobile food vehicle operator to whom Section XI-10-13.18(E)(4)(a)(i) applies shall submit to the City, concurrently with the permit application, a signed letter from the owner of the property on which the restroom is located to verify that the mobile food vending operation has access to the restroom for use by employees and customers (if required) during its hours of operation.

b. For mobile food parks, one single-stall, gender-neutral restroom shall be provided for every five mobile food vehicles operating on the site. In calculating the restroom requirement, fractional numbers shall be rounded down to the nearest whole number.

c. Mobile food vending operations requiring a Special Event Permit shall be subject to the requirements and procedures in Section 15 of this Chapter for restrooms.

F. Operational Standards and Requirements

1. Mobility of operations. Mobile food vehicles shall not connect to temporary or permanent on-site water, gas, electricity, telephone or cable sources.

2. Hours of operation. Unless otherwise approved pursuant to Section XI-10.13.18(G)(1), hours of operation for mobile food vending shall be between the hours of 7:00 am and 10:00 pm.

3. Parking and storage of mobile food vehicles. Outside of hours of active operations mobile food vehicles shall be removed from the operating site, whether on private property or in the public right-of-way. Mobile food vehicles shall not be parked overnight at the location of operation.

4. Noise. Mobile food vending operations shall comply with the provisions of Milpitas Municipal Code Title V, Chapter 213 – Noise Abatement.

5. Signage. A mobile food vehicle may display signage permanently attached to or painted on the vehicle advertising its products and services. A mobile food vehicle may also place one (1) free-standing

'sandwich board' sign within 10 feet of the vehicle that displays information such as the menu, and specials of the day. Any free-standing signage shall be subject to the provisions of Section XI-10-24 of this chapter. No other signs or banners that are separate from the mobile food vehicle shall be placed at the operating site or within the public right-of-way.

6. Trash management and disposal.

   a. For one mobile food vehicle operating on private property or in the public right-of-way, and for mobile food parks:

      i. All mobile food vending operations shall provide separate and clearly marked receptacles for trash, recycling and/or compost (minimum size for each 32 gallons), according to the collection services available, at the operating site. Operators of mobile food vehicles shall properly dispose of all trash, recycling and/or compost generated by their operations daily.

      ii. The operator of a mobile food vehicle shall keep the area within a 25-foot radius of the vehicle, including private property, sidewalks, and roadways, clean and free of paper, food waste and other refuse generated by the operation.

b. Mobile food vending operations requiring a Special Event Permit shall be subject to the requirements and procedures in Section 15 of this Chapter for trash management and disposal.

c. Mobile food vending operations, if using disposable food service ware for packaging and serving, shall use products that are recyclable or compostable. Use of polystyrene foam food service ware is prohibited per Milpitas Municipal Code Title III, Chapter 8 – Prohibition of Expanded Polystyrene (EPS) Foam Food Service Ware.

G. Exceptions to Standards and Requirements

1. Exceptions or reductions to the Location and Siting Requirements, Site Design Standards, and Operational and Standards in Subsections XI-10-13.18(D) through (F) may be granted at the discretion of the Planning Director and the Fire Marshal based on site-specific conditions and subject to the following findings:

   a. The proposed number, configuration, and operation of mobile food vehicles is generally consistent with the overall intent of these regulations;

   b. The proposed mobile food vending activity will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.

H. Other Permits and Licenses Required

1. All mobile food vehicles operating within the City of Milpitas must obtain a permit for mobile food facilities from the Santa Clara County Department of Environmental Health. The valid County health permit shall at all times be displayed on the vehicle in a location visible to the public.

2. All mobile food vehicles operating within the boundaries of the City of Milpitas shall obtain a current City of Milpitas business license prior to establishing a vending location on public or private property or setting up operations. The license shall at all times be displayed on the vehicle in a location visible to the public.

All mobile food vehicles must have current and valid vehicle registration clearly displayed on their license plates while vending at the operating site or in the public right-of-way.

SECTION 12. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 39

Title XI, Chapter 10, Section 39 (POS Park and Public Open Space District), Subsection XI-10-39.03 (POS Park and Public Open Space District – Conditional Uses) of the Milpitas Municipal Code is hereby amended to read as follows:

Section 39 - POS Park and Public Open Space District

XI-10-39.02 - Uses Permitted

The following are the principal permitted uses in a POS District:

39.02-1 Public parks and recreational facilities, with the exception of public community centers and public indoor sports centers.

39.02-2 Public trails.

39.02-3 Public community gardens.

The following are permitted as accessory uses in a POS District:

39.02-4 One mobile food vehicle, subject to approval of a Minor Site Development Permit pursuant to Subsection XI-10-57.03(B)(2) of this Chapter. See also Subsection XI-10-13.18.

39.02-5 Two or more mobile food vehicles operating together for a period of seven consecutive days or less, subject to approval of a Special Event Permit pursuant to Section 15 of this Chapter. See also Subsection XI-10-13.18.

XI-10-39.03 - Conditional Uses

The following uses may also be permitted if their location is first approved by the Planning Commission, as provided for in Section 57, after considering a recommendation from the Parks, Recreation, and Cultural Resources Commission:

39.03-1 Public community centers and public indoor sports centers.

39.03-2 Day care centers.

39.03-3 Public utility facilities.

39.03-4 Radio or television transmitters.

SECTION 13. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 53

Title XI, Chapter 10, Section 53 (Off-Street Parking Regulations), Subsection XI-10-53.09 (Off-Street Parking Required by Land Use), Table 53.09-1 (Number of Parking Spaces Required) of the Milpitas Municipal Code is hereby amended to read as follows:

Table 53.09-1
Number of Parking Spaces Required

Use	Minimum Parking Spaces Required
A. Commercial Uses	
Commercial Services[1] (floral shops, barber shops, dry cleaners, Laundromats, photocopy shops)	1 per 200 sq. ft.
Furniture and appliance stores and other bulky item retail	1 per 350 sq. ft.
General Retail and Convenience Stores	1 per 200 sq. ft.
Mortuary, funeral parlor	1 per 4 seats and 1 per employee
Plant nursery	1 per 200 sq. ft.
B. Entertainment and Recreation	
Arcade and amusement	1 per 200 sq. ft.
Billiards	1 per 200 sq. ft.
Bowling Alleys including incidental accessory uses (eating and drinking, billiards, etc.)	6 per alley or lane
Clubs and Lodges	1 per 200 sq. ft.
Commercial Athletic Facility (indoor)	1 per 150 sq. ft.
With outdoor or indoor sports courts	
Small courts (tennis, badminton)	2 per court plus required parking for other uses on site.
Large courts (basketball, volleyball)	5 per court plus required parking for other uses on site.
Golf Course	6 per hole plus parking for ancillary uses
Miniature Golf	1.25 per tee, plus 1 per employee
Motion Picture Theater (indoor)	1 per 3.5 seats
Nightclub	1 per 30 sq. ft.
C. Health and Veterinarian Uses	
Convalescent Homes	1 per 2 beds or 1 per 1,000 sq. ft, whichever is greater
Hospital	1 per bed or 1 per 220 sq. ft., whichever is greater
Kennel, indoor	1 per 1,000
Massage Establishments	Two per treatment room or if no treatment room, one per 2 chairs or 2 tables
Medical and dental Clinic and Office	1 per 225 sq. ft.
Veterinary Clinic and Animal Grooming	1 per 250 sq. ft.
D. Industrial Uses	
Distribution Manufacturing Warehousing	1 per 1,500 sq. ft.
Mini Storage	1 per 5,000 sq. ft., plus 1 per resident manager
Wholesale	1 per 500 sq. ft.
Research and Development Medical Laboratories High employee demand uses	1 per 300 sq. ft.
Office space within an industrial building (to be combined with categories above)	1 per 350 sq. ft.

E. Lodging	
Extended Stay Hotels	0.7 per guest room or unit[5]
Hotels	0.7 per guest room[5]
Motels	0.7 per guest room[5]
F. Professional Offices, Financial Institutions and Related Uses	
Automated Teller Machine (free standing)	2 per machine
Financial institutions (banks, savings and loans, etc.)	1 per 180 sq. ft.
Offices, administrative and business services	1 per 240 sq. ft.
G. Public, Quasi-Public and Assembly Uses	
Adult Day Care	1 per 500 sq. ft.
Auditoriums and theaters and places of meeting and assembly	1 per 4 seats
Child Care Uses[2, 3]:	
Day Care School	1 per classroom or 1 per 500 sq. ft., whichever is greater.
Small family child care home	Same as required for underlying residential use
Large Family Child Care Home and Child Care Centers	1 per 1.5 employees
Community Center	1 per 4 fixed seats, or 1 per 6 linear feet of seating, plus 1 per 200 square feet of area without seating but designed for meeting or assembly by guests, plus 1 per 500 sq. ft. of outdoor area developed for recreational purposes
Museums	1 per 400 sq. ft.
Public Utilities	1 per 400 sq. ft.
Religious Institutions	1 per 5 seats in the main area of assembly plus parking for classrooms and offices in this table. Where there are no seats, then 1 seat equals 7 sq. ft.
Educational Institutions:	
School-elementary (K-8 Private)	1 per classroom, plus 1 per 240 sq. ft. of office
School-secondary (9-12 Private)	1 per classroom, plus 1 per 240 sq. ft. of office, plus 1 per 5 students
Vocational School, including business, professional, technical and trade	1 per 200 sq. ft.
Instructional Studios (Dance, Yoga)	1 per 150 sq. ft.
Private instruction, personal enrichment (tutoring)	1 per instructional area or classroom, whichever is greater. No fewer than 3 spaces.
Stadiums and arenas	1 per 4 seats
H. Restaurants or Food Service	
Banquet facilities	See restaurants below
Bars, Drinking Establishments	1 per 30 sq. ft.
Drive thru	See "Vehicle Related Uses" section.
Restaurants:	
Sit down:	
Indoor and outdoor:	1 per 39 square feet of dining area.
Take out:	1 per 2.5 seats (indoor/outdoor) plus 1 per 60 sq. ft. GFA for the ordering or take out area.

Mobile Food Parks	1 per 2.5 seats provide for on-site dining, p[illegible] 60 sq. ft. of lot area dedicated to mobile food vending.
I. Residential Uses	
Single Family and Duplexes:	
3 bedrooms or fewer	2 per unit[4]
4 or more bedrooms	3 per unit, plus 1 per each additional bedroom[4]
Multi-Family (R3—R5 zones):	
Studio	1 covered per unit
1 bedroom	1.5 covered per unit
2—3 bedrooms	2 covered per unit
4 or more bedrooms	3 per unit, plus 1 additional space for each additional bedroom (at least two covered).[4]
Guest parking	
Projects with Parking structures	15% of the total required, may be uncovered
Projects with Private garages	20% of the total required, may be uncovered
Bicycle parking	5% of the total required
Boarding houses, dormitories, sororities and fraternities	1 per each room rented
Live-Work Units	*Single family and duplexes* parking requirements shall apply, plus 1.5 for the commercial component
Mixed Use buildings or sites	
Residential use	
Studio	1 covered per unit
1 bedroom	1.5 covered per unit
2—3 bedrooms	2 covered per unit
4 or more bedrooms	3 per unit, plus 1 additional space for each additional bedroom (at least two covered).[4]
Guest parking	
Projects with Parking structures	15% of the total required, may be uncovered
Projects with Private garages	20% of the total required, may be uncovered
Bicycle parking	5% of total required
Commercial use	
Ground Floor Retail	1 per 250 sq. ft.
Office	If building is 1,000 sq. ft. or smaller: 1 per 250 sq. ft. If building is larger than 1,000 sq. ft.: 3.3 per 1,000 sq. ft.
Short-Term Rentals	1 per unit
Other uses	Refer to specific uses within this table
Bicycle parking	5% of total required
Mobile Homes	Refer to Section 13.07, Mobile Homes
Senior Housing	1 per unit plus 2 per manager's unit
Single Room Occupancy (SRO)	1 per unit
J. Vehicle Related Uses	
Auto rental agency	1 per 400 sq. ft. plus 1 per rental vehicle
Auto repair (tire, oil change, smog check, etc.)	3 per service bay

Car Wash	1 per 200 sq. ft. of building area and reserv outside of building equal to two (2) times the maximum capacity of facility
Gas & Service Stations:	
With Retail	1 per 200 sq. ft.
With Auto Repair	3 per service bay
Auto dealerships:	
Sale or lease of vehicle	1 per 200 sq. ft. of showroom
Office	1 per 200 sq. ft.
With Service Bays	3 per service bay
Window service or drive-thru in conjunction with any other use	The required parking for primary use (restaurant, or other use providing window service) plus queuing of 5 vehicles which do not interfere with any on-site parking spaces

[1] Refer to Subsection 2.03, Definitions, of this Chapter for a full description of "Commercial Services."

[2] For loading and unloading: One (1) parking space per six (6) children up to five (5) spaces and thereafter one (1) space per ten (10) children. Driveways, garage aprons and street frontage may be counted if appropriate permits are first received when calculating spaces for childcare homes. Tandem spaces are prohibited.

[3] Exceptions for Child Care Requirements: The parking and loading/unloading requirements for childcare facilities may in the Planning Commission's discretion be reduced, based on an empirical study (provided by the applicant) which establishes no adverse effects will occur as a result. The required number of loading/unloading spaces may be reduced without a study by one (1) space for each employee permanently assigned to load and unload children from vehicles.

[4] Applicable to new and existing projects being remodeled resulting in additional bedrooms submitted for approval after April 7, 2009. Existing projects or projects either entitled or submitted active planning applications prior to April 7, 2009 shall use the parking regulations in effect at the time of entitlement or application submittal. For R4, R5, MXD/MXD2/MXD3 zones, 15% guest parking is legal and conforming for projects entitled or active planning applications submitted prior to April 7, 2009.

[5] Refer to Subsection XI-10-53.15, Parking Standards for Hotels and Motels, of this Chapter for allowed reductions to minimum parking requirements.

SECTION 14. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision, or part has no effect on the validity of the remainder.

SECTION 15. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance takes effect 30 days from the date of its passage. The City Council hereby directs the City Clerk to 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:	**Second Reading of Ordinance No. 312 of the City Council of the City of Milpitas Adding Section 3.5 ("Regulation of Lobbying Activities") to Chapter 310 ("Open Government Ordinance"), of Title I ("Administration") of the Milpitas Municipal Code (The "Code") and Modifying Section I-310-3.160 of the Code (Staff Contact: Michael Mutalipassi, City Attorney, 408-586-3040)**
Category:	Leadership and Support Services
Meeting Date:	6/21/2022
	Recommendation: Move to waive the second reading and adopt Ordinance No. 312 adding Section 3.5 ("Regulation of Lobbying Activities") to Chapter 310 ("Open Government Ordinance"), of Title I ("Administration") of the Milpitas Municipal Code (the "Code") and Modifying Section I-310-3.160 of the Code).

Background:
This Ordinance was introduced at the June 7, 20221 City Council meeting. The Council requested a minor edit, the removal of section I-310-3.5.130 subsection (e). The Ordinance is now ready for its second reading and adoption.

Fiscal Impact:
De minimus.

California Environmental Quality Act:
The action is not considered a project under CEQA as there will be no direct, or reasonably foreseeable indirect physical change in the environment.

Recommendation:
Move to waive the second reading and adopt Ordinance No. 312 adding Section 3.5 ("Regulation of Lobbying Activities") to Chapter 310 ("Open Government Ordinance"), of Title I ("Administration") of the Milpitas Municipal Code (the "Code") and Modifying Section I-310-3.160 of the Code)

Attachment:
Ordinance No. 312 adding Section 3.5 ("Regulation of Lobbying Activities") to Chapter 310 ("Open Government Ordinance"), of Title I ("Administration") of the Milpitas Municipal Code (the "Code") and Modifying Section I-310-3.160 of the Code)

REGULAR

NUMBER: **312**

TITLE: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS ADDING SECTION 3.5 ("REGULATION OF LOBBYING ACTIVITIES") TO CHAPTER 310 ("OPEN GOVERNMENT ORDINANCE"), OF TITLE 1 ("ADMINISTRATION") OF THE MILPITAS MUNICIPAL CODE (THE "CODE") AND MODIFYING SECTION I-310-3.160 OF THE CODE**

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of June 7, 2022, upon motion by Councilmember Dominguez 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:

_____
Wendy Wood, City Clerk

APPROVED:

_____
Rich Tran, Mayor

APPROVED AS TO FORM:

_____
Michael Mutalipassi, City Attorney

BE IT ORDAINED BY THE CITY OF MILPITAS AS FOLLOWS:

WHEREAS, the citizens of Milpitas have a right to know the identity of interests which attempt to influence decisions of City government, as well as the means employed by those interests; and

WHEREAS, complete public disclosure of the full range of activities by and financing of lobbyists and those who employ their services is essential to the maintenance of citizen confidence in the integrity of City government; and

WHEREAS, it is in the public interest to ensure that lobbyists do not misrepresent facts, misrepresent their positions, or attempt to deceive a City official through false communications; do not place a City official under personal obligation to themselves or their clients; and do not represent that they can control the actions of any City official; and,

WHEREAS, it is in the public interest to adopt this section to ensure adequate and effective disclosure of information about efforts to lobby City government.

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: That Section 3.5 ("Regulation of Lobbying Activities") of Chapter 310 ("Open Government Ordinance"), of Title 1 ("Administration") of the Milpitas Municipal Code is added to read as follows:

Section 3.5 - Regulation of Lobbying Activities

Sections

I-310-3.5.10 Purpose

I-310-3.5.20 Interpretation

I-310-3.5.30 Definitions

I-310-3.5.40 Registration

I-310-3.5.50 Annual registration renewal

I-310-3.5.60 Termination of lobbyist status

I-310-3.5.70 Active status

I-310-3.5.80 Registration fees

I-310-3.5.90 Required registration information

I-310-3.5.100 Quarterly reports

I-310-3.5.110 Records retention

I-310-3.5.120 Lobbyist identification

I-310-3.5.130 Prohibitions

I-310-3.5.140 Gifts

I-310-3.5.150 Enforcement

I-310-3.5.160 Injunction

I-310-3.5.170 Practice restrictions

I-310-3.5.180 Exemptions

I-310-3.5.190 Lobbyists on Behalf of the City

I-310-3.5.10 Purpose

The purpose of this chapter is to impose registration and disclosure requirements on those engaged in efforts to influence the decisions of City policy makers for Compensation. Disclosure of lobbyists' identities and activities fosters public confidence in government officials by making government decision-making more transparent to the public. Additionally, the disclosure and registration requirements ensure that City Officials are made aware of the interests that Lobbyists represent when the officials are lobbied.

I-310-3.5.20 Interpretation

Unless the term is specifically defined in this chapter or the contrary is stated or clearly appears from the context, the definitions set forth in Government Code section 81000 et seq., shall govern the interpretation of this chapter.

I-310-3.5.30 Definitions

For the purposes of this chapter, the following definitions shall be applicable:

(a) "Activity Expense" means any payment made by a Lobbyist to or directly benefiting any City Official, City Official-elect or member of his or her immediate family. Activity Expenses include Gifts, honoraria, consulting fees, salaries and any other form of Compensation, but do not include campaign contributions.

(b) "Administrative Action" means the proposal, drafting, development, consideration, advocacy or recommendation of any rule, regulation, agreement or contract, permit, license or hiring action.

(c) "At the behest" means at the specific direction of, or at the personal request or suggestion of, or with the express prior consent of, any elective City Official, City Official-elect or candidate for elective City office.

(d) "City Official" means any public official, or City employee who participates in the consideration of any Legislative Action or Administrative Action other than in a purely clerical, secretarial or ministerial capacity. It shall also include any City board or commission member, or City representative to any joint powers authority to which the City is a party, and any consultant to the City.

(e) "Client" means a Person who is represented by a Lobbyist.

(f) "Compensation" includes, but is not limited to, money of any denomination or origin; goods or services or anything of value, delivered or rendered; commissions related to the purchase or sale of real property, or a contract or promise therefor; or promises to perform or provide services or contractual arrangements or awards.

(g) "Contact" means attendance at a meeting with a City Official or City Official-elect, or any direct communication with a City Official or City Official-elect, whether oral, electronic or in writing, including, but not limited to communication through an agent, associate or employee, for the purpose of engaging in Lobbying activity.

(h) "Fundraising Activity" means soliciting a contribution; hosting or sponsoring a fundraising event; or hiring a fundraiser or contractor to conduct any event designed for political fundraising at which contributions for any City Official, candidate for elective City office or any controlled committee of an elected City Official or candidate for City office or for any political action committee, political party or candidate for elective office of a governmental Organization are solicited, delivered or made.

(i) "Gift" means gift as defined in the California Political Reform Act, Government Code Section 81000 et seq., as amended from time to time.

(j) "Independent Expenditure" means an expenditure made by any Person, including a payment of public moneys by a state or local governmental agency, in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee.

(k) "Influencing" means the purposeful communication, either directly or through agents, promoting, supporting, modifying, opposing, causing the delay or abandonment of conduct, or otherwise intentionally affecting the behavior of a City Official or official-elect, by any means, including, but not limited to, providing or using persuasion, information, incentives, statistics, studies or analyses.

(l) "Intermediary" means a Person who makes a campaign or officeholder contribution on behalf of another Person. A Person is an Intermediary for a contribution if the recipient of the contribution would consider that Person to be the contributor without the disclosure of the identity of the true source of the contribution. A Lobbyist acts as an Intermediary if the Lobbyist makes a contribution on behalf of another Person, and that other Person is acknowledged as the contributor, and the Lobbyist is reimbursed for the contribution.

(m) "Legislative Action" means the drafting, introduction, consideration, modification, enactment or defeat of any resolution, ordinance, amendment thereto, report, nomination, or other action of the Mayor, City Council, any City board, committee, or commission or any joint powers authority of which the City is a party, acting in its official capacity, or the granting, approval, or amendment of contracts or agreements to which the City is a party by any of the foregoing.

(n) "Lobbying" is the Influencing or attempting to influence a Legislative Action or Administrative Action of the City.

(o) "Lobbyist," unless exempt under subsection (p) of this section, means:

(1) Contract Lobbyist: A Person who engages in Lobbying on behalf of one or more Clients (acting individually or through agents, associates, employees or contractors) and who has received or has entered into an agreement for Compensation of one thousand dollars

($1,000.00) or more, or equivalent nonmonetary Compensation ("threshold Compensation") for engaging in Lobbying during any consecutive three-month period;

(2) Business or Organization Lobbyist: Any business or Organization, whose owner(s), officer(s) or employee(s) carry out Lobbying on its behalf, in an aggregate amount of ten hours or more within any consecutive twelve (12)-month period, whether or not such officers or employees are specifically compensated to engage in Lobbying; provided, that the activities of officers shall be considered Lobbying only if those officers receive Compensation by the business or Organization beyond reimbursement for their reasonable travel, meals or incidental expenses; or

(3) Expenditure Lobbyist: A Person who makes payments or incurs expenditures of five thousand dollars ($5,000.00) or more during any calendar year in connection with carrying out public relations, advertising or similar activities with the intent of soliciting or urging, directly or indirectly, other Persons to communicate directly with any City Official in order to attempt to influence Legislative Action or Administrative Action. The five-thousand-dollar ($5,000.00) threshold shall not include: (A) Compensation paid to Contract Lobbyists or employees for Lobbying; or (B) dues payments, donations, or other economic consideration paid to an Organization, regardless of whether the dues payments, donations or other economic consideration are used in whole or in part to lobby.

(p) Exemptions to "Lobbyist" include:

(1) Any public official acting in his or her official capacity or acting within the scope of his or her employment or appointment;

(2) The Media, when limiting its action to the ordinary course of news gathering or editorial activity, as carried out by members of the press. "Media" shall mean newspapers or any other regularly published periodical, radio or television station or network or information published on the Internet. This exemption does not apply to individuals conducting media activities when that individual would otherwise qualify as a Contract Lobbyist under this chapter;

(3) Persons reimbursed for only their reasonable travel, meals or incidental expenses, including, but not limited to, uncompensated members or directors of nonprofit Organizations, such as chambers of commerce;

(4) Persons whose communications regarding any Legislative Action or Administrative Action are solely limited to appearing at or submitting testimony for any public meeting held by the City or any of its agencies, offices, or departments, as long as the communications thereto are public records available for public review. Persons who appear or testify at public meetings and who otherwise qualify as Lobbyists due to other activities must register and disclose their Lobbying activities directed toward City Officials, and must identify themselves and their Clients at public meetings, in the same manner and to the same extent such registration, disclosure, and identification is required of all other Lobbyists;

(5) Persons submitting bids or responding to requests for proposals, provided the provision of such information is limited to direct conversation or correspondence with the official or department specifically designated to receive such information;

(6) Persons providing oral or written information pursuant to a subpoena or otherwise compelled by law or regulation, or in response to an official request; provided, that the request and response thereto are public records available for public review;

(7) Designated representatives of a recognized employee Organization whose activities are limited to communicating with City Officials or their representatives regarding (A) wages, hours and other terms or conditions of employment, or (B) the administration, implementation or interpretation of an existing employment agreement;

(8) Persons who are professionally licensed by a State licensing Organization pursuant to the California Business and Professions Code, including, but not limited to, attorneys, architects and engineers; provided however, the exemption for attorneys shall only be applicable if the attorney is engaged in the practice of law with respect to the subject of the employment;

(9) Board members or employees of nonprofit 501(c)(3) corporations, unless the nonprofit Organization is Lobbying for a specific project, issue or Person for which the Organization has received Compensation or a contribution to lobby for or against a specific project, issue or Person;

(10) Members of neighborhood associations;

(11) A Person hired by the City for work performed on behalf of the City, or a Person who prepares documents for consideration by the City under the California Environmental Quality Act;

(12) The owner of a business whose attempts to influence governmental action are on behalf of the business and:

(i) The owner or business has not retained a Person to engage in Lobbying activity on behalf of the owner or business; or

(ii) Officers or employees of the business (not including the owner) have not engaged in Lobbying activity on behalf of the owner or business.

(iii) This exemption applies only to the threshold for becoming a Business or Organization Lobbyist as defined under section I-310-3.5.30(o), subsection (2). An owner of a business who meets this exemption is subject to the requirements of this chapter if he or she meets the definition of Contract Lobbyist or Expenditure Lobbyist as defined under subsections (1) and (3) of section I-310-3.5.30(o), respectively;

(13) Persons who meet with City Officials solely to lodge "whistleblower" complaints relating to alleged improper governmental activity such as mismanagement, waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

(14) Persons whose communications with City Officials are solely in connection with the administration of an existing contract or agreement between the Person and the City; or

(15) Persons who meet with the City Attorney, or City staff regarding any claim or litigation matter, negotiation of any agreements or contracts where the City is a party, or the requirements or interpretation of this chapter.

(q) "Organization" means any Person that is not an individual.

(r) "Person" means any individual, domestic or foreign corporation, for-profit or nonprofit entity, firm, association, syndicate, union, chamber of commerce, joint-stock company,

partnership of any kind, limited liability company, common-law trust, society, or any other group of Persons acting in concert.

I-310-3.5.40 Registration

Lobbyists shall register with the City Clerk within fifteen (15) days after qualifying as a Lobbyist under Milpitas Municipal Code section I-310-3.5.30. Should a Lobbyist have a change to its registration information, including, but not limited to, the City Legislative Action or Administrative Action as to which the Lobbyist has been engaged, after the annual registration period, such Lobbyist shall file an amended registration with the City Clerk within fifteen (15) days of such change with the changed information.

I-310-3.5.50 Annual registration renewal

A Lobbyist shall renew his or her registration by January 15th of each year unless he or she has terminated their status as a Lobbyist pursuant to Milpitas Municipal Code section I-310-3.5.60 by such date.

I-310-3.5.60 Termination of lobbyist status

After initial registration, annual registration renewal will not be required if a declaration attesting to the termination of Lobbying services within the City has been filed with the City Clerk no later than January 15th.

I-310-3.5.70 Active status

All registrations, renewals and terminations will be deemed filed on the date received by the City Clerk. A lobbyist shall be deemed active for the duration of the year of registration ending December 31, unless a declaration attesting to termination of lobbying services within the City is filed.

I-310-3.5.80 Registration fees

Persons subject to the registration requirements of this ordinance shall pay an annual fee set by resolution of the City Council.

(a) The applicable registration fee is due at the time of registration or registration renewal. Payment will be deemed delinquent thereafter. Delinquency fees may be assessed as specified in subsection (c) below, if payment occurs after the due date.

(b) In addition to the annual fee, each registrant shall pay a fee set by resolution of the City Council per client for whom lobbying is undertaken for compensation in excess of five hundred dollars ($500.00). The fees for clients as of the date of initial registration shall be submitted with the registration. The fees for subsequent clients shall be due and submitted within fifteen (15) days of such change with the changed information pursuant to section I-310-3.5.30.

(c) A fine of twenty-five dollars ($25.00) per day for delinquent fees, up to a maximum of five hundred dollars ($500.00), will be assessed until in compliance with the registration provisions herein.

I-310-3.5.90 Required registration information

The initial registration shall contain the name, business address, telephone, email addresses and if applicable, business license of all persons required to register pursuant to this Chapter, including the names of all owners of sole proprietorships and partnerships of fewer than ten (10) persons. If the registrant is a corporation, limited liability company, or limited liability partnership, it shall also include the names of the president, secretary, chief financial officer, managing members, and agent for service of process, if any. Any business or organization registering under this act shall also briefly describe the nature of its business or organization and contact individual. In addition to this information, the report shall contain the following:

(a) Contract Lobbyists: The name, business address, telephone number of each Client, the nature of each Client's business and the item(s) of Legislative Action or Administrative Action the Lobbyist is seeking to influence on behalf of the Client; and the name of each Person employed or retained by the Lobbyist to lobby on behalf of each Client.

(b) Business or Organization Lobbyists: The names of owners, officers or employees conducting Lobbying activities and the item(s) of Legislative Action or Administrative Action the Lobbyist is seeking to influence.

(c) Expenditure Lobbyists: The item(s) of municipal Legislative Action or Administrative Action the Lobbyist is seeking to influence.

(d) Payment received by the reporting Lobbyist for services as a consultant or in any other capacity for services rendered to a City agency, any City Official or any City Official-elect or their controlled committees, or ballot measure committee within the previous calendar year. The dates of payment and name of each payer shall be included.

(e) Campaign and officeholder contributions that a Lobbyist made, delivered or acted as an Intermediary for, to an elected City Official or candidate for City office made during the preceding calendar year. A Person is an Intermediary for a contribution if the recipient of the contribution would consider that Person to be the contributor without the disclosure of the identity of the true source of the contribution. Also, a Lobbyist acts as an Intermediary if the Lobbyist makes a contribution on behalf of another Person, and that other Person is acknowledged as the contributor, and the Lobbyist is reimbursed for the contribution.

(f) Campaign and officeholder contributions made at the behest of an elected City Official or candidate to any other elected public official or candidate for public office during the preceding calendar year.

(g) All Independent Expenditures made for or on behalf of a City Official or candidate for City office made during the preceding calendar year.

(h) Fundraising Activity for any City Official, candidate for elective City office or any controlled committee of the elected City Official or candidate for City office or for any political action committee, political party or candidate for elective office of a governmental Organization made at the behest of a City Official during the preceding calendar year. Required information and disclosures must include the name of the City Official, candidate, committee or party on whose behalf the Lobbyist engaged in fundraising activities, or delivered or acted as Intermediary for one or more contributions. The information and disclosures must also include the name of the City Official requesting the Fundraising Activity, the date of the Fundraising Activity, the name of the contributors and the amount of contributions raised, delivered and/or made in connection with which the Lobbyist acted as an Intermediary.

(i) Donations to for profit or nonprofit Organizations made at the behest of a City Official or candidate for elective City office of any contribution or payment of more than one thousand dollars in the aggregate made during the preceding calendar year.

(j) Contacts made with City Officials or City Officials-elect during the preceding calendar year for the purpose of influencing or attempting to influence Legislative Action or Administrative Action. Contact information must include a brief description of the item(s) of Legislative Action or Administrative Action the Lobbyist is seeking to

influence, the date(s) of Contact, the method(s) of Contact, and the number of Contacts in the following ranges: (one), (two to five), (six to ten) or (eleven or more).

(k) Activity Expenses such as payments that directly benefit any City Official, City Official-elect or member of his or her immediate family or domestic partner made during the preceding calendar year. Activity Expenses include Gifts, honoraria, consulting fees, salaries and other forms of Compensation, but do not include campaign contributions.

(l) The name, address, title and telephone number of the Person responsible for preparing the report, together with that individual's signature attesting to the authority of the signatory and the accuracy and truthfulness of the information submitted.

I-310-3.5.100 Quarterly reports

Quarterly reports for the prior three-month period are to be filed with the City Clerk on or before July 15th, October 15th, January 15th, and April 15th of each year, whether or not any Lobbying activities have occurred during such period. Electronic reporting may also be permitted by the City Clerk. Each quarterly report shall contain the same information as required to be disclosed in the initial registration, for those activities occurring in that period. If a Lobbyist has terminated all Lobbying activities during such period, the Lobbyist may file a declaration of termination with the quarterly report. The final quarterly report shall include disclosure of any Lobbying activities during the period of termination.

I-310-3.5.110 Records retention

All information, reports and statements required to be filed under the provisions of this chapter shall be compiled and preserved by the City pursuant to the City's records retention schedule and shall be open to public inspection. Copies of the records pertaining to the above-

required reports shall be preserved by the Lobbyist for inspection and audit for a period of four years from date of production.

I-310-3.5.120 Lobbyist identification

When appearing in a Lobbying capacity at any meeting with a City Official or at a public meeting of the City Council or any other City board, commission or hearing, a Contract Lobbyist shall identify himself/herself and the Client(s) on whose behalf he/she is appearing, and a Business or Organization Lobbyist shall identify himself/herself and the business or Organization he/she represents.

I-310-3.5.130 Prohibitions

It shall be unlawful for any Lobbyist to commit any of the following acts:

(a) Unregistered Lobbying: Acting as a Lobbyist in the City without having registered in compliance with this chapter, or knowingly to employ a Person or entity to serve as a Lobbyist when such Person is not registered pursuant to this chapter.

(b) Unauthorized Communications: Sending or causing any communication to be sent to any City Official in the name of any nonexistent Person or in the name of an existing Person without the express or implied consent of such Person.

(c) Indirect Violations: Attempting to evade the requirements of this chapter through indirect efforts or through the use of agents, associates, intermediaries or employees.

(d) Creation of Obligations: Performing or sponsoring any act with the purpose and intent of placing any City Official under personal obligation to the Lobbyist.

~~(e) Contingent Compensation: Compensation for Lobbying activity when the Compensation is directly dependent on the result of Legislative Action(s) or Administrative Action(s) that are the subject of the Lobbying activity.~~

I-310-3.5.140 Gifts

It shall be unlawful for any Lobbyist to deliver or cause to be delivered any Gift to any City Official, and for any City Official to accept any Gift from a Lobbyist.

I-310-3.5.150 Enforcement

Persons or entities that violate this chapter may be subject to penalties as set forth in Milpitas Municipal Code sections I-1-4.09-1 to I-1-4.09-11.

I-310-3.5.160 Injunction

The City Attorney or his designee may seek injunctive relief in the courts to enjoin violations of or to compel compliance with the provisions of this chapter.

I-310-3.5.170 Practice restrictions

No Person who the City finds to have violated this chapter may act as a Lobbyist or otherwise attempt to influence municipal Legislative Actions or Administrative Actions for Compensation for one year after such finding of violation.

I-310-3.5.180 Exemptions

Any Person who in good faith and on reasonable grounds believes that he or she is not required to comply with the provisions of Milpitas Municipal Code section I-310-3.5.40 by reason of his or her being exempt under Milpitas Municipal Code section I-310-3.5.30(p) shall not be deemed to have violated the provisions of Milpitas Municipal Code section I-310-3.5.40 if, within fifteen (15) days after notice from the City, he or she either complies or furnishes satisfactory evidence to the City that he or she is exempt from registration.

I-310-3.5.190 Lobbyists on Behalf of the City

(a) Any lobbyist who contracts for economic consideration with the City of Milpitas to represent the City in matters before any local, regional, state, or federal administrative

or legislative body shall file a public records report of their activities on a quarterly basis with the City Clerk's office. This report shall be maintained by the City Clerk's office and not be exempt from disclosure. Each quarterly report shall identify all financial expenditures by the lobbyist, the individual or entity to which each expenditure was made, the date the expenditure was made, and specifically identify the local, state, regional or national legislative or administrative action the lobbyist supported or opposed in making the expenditure. The failure to file a quarterly report with the required disclosures shall be a violation of this chapter.

(b) No person shall be deemed a lobbyist on behalf of the City under subsection (a) of this section, unless that person receives or becomes entitled to receive at least $250 total compensation in any month for influencing legislative or administrative action on behalf of the City of Milpitas. No business or organization shall be deemed as a lobbyist under subsection (a) of this section unless it compensates its employees or members for their lobbying activities on behalf of the City of Milpitas, and the compensated employees or members have at least 25 separate contacts with local, state, regional or national officials for the purpose of influencing legislative or administrative action within any two consecutive months. "Total compensation" shall be calculated by combining all compensation received from the City of Milpitas during a month of lobbying activities on matters at the local, state, regional or national level. "Total number of contacts" shall be calculated by combining all contacts made during a two-month period on behalf of the City of Milpitas for all lobbying activities on matters at the local, state, regional or national level.

(c) Funds of the City of Milpitas shall not be used to support any lobbying efforts to restrict public access to records, information, or meetings, except where such effort is solely for the purpose of protecting the identity and privacy rights of private citizens.

SECTION 3 AMENDMENT OF MILPITAS MUNICIPAL CODE: That section I-310-3.160 ("Lobbyists") of Chapter 310 ("Open Government Ordinance"), of Title 1 ("Administration") of the Milpitas Municipal Code is amended to read as follows:

I-310-3.5.190

Deleted by Ordinance #####.

SECTION 4. 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.

SECTIN 5. EFFECTIVE DATE AND POSTING: In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Adopt a Resolution to Supersede Resolution 9145 to Add the Commemoration of India Independence Day as a Flag-raising Event at Cesar Chavez Plaza (Staff Contact: Renee Lorentzen, Director of Recreation and Community Services, 408-586-3409)**
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	6/21/2022
	Recommendation: Adopt a Resolution to Supersede Resolution 9145 to Add the Commemoration of India Independence Day as a Flag-raising Event at Cesar Chavez Plaza

BACKGROUND:
Pursuant to Milpitas Municipal Code Section I-600-2.30(3), the City Council may, by resolution, direct City staff to display Commemorative Flags as an expression of the City's official sentiments by any of the following means: (i) display in lieu of the MIA/POW flag on one of the four City Hall Display Flag Poles located at the rear of City Hall adjacent to the pond, (ii) display in lieu of the flag of the State of California on one of the three flag poles located at Cesar Chavez Plaza, or (iii) display through ground level ceremonies at any of the following locations at the Civic Center complex or the City of Milpitas Community Center:

(1) City Hall Rotunda
(2) Area adjacent to pond at City Hall
(3) Cesar Chavez Plaza
(4) City Council Chambers

On September 7, 2021 City Council adopted Resolution No. 9102 directing staff to annually fly the City Event Celebration Flags and/or other Commemorative Flags for various upcoming Recreation and Community Services events in connection with and during periods (up to 30 days) of recognition for the following commemorative events: Black History Month, Cesar Chavez Birthday, Vietnamese Heritage Day, Public Safety Appreciation Day, LGBTQ Month, Philippine Independence Day, Juneteenth, Hispanic Heritage Month, Filipino American History Month, Eritrea Independence Day, and Native American History Month, in the Cesar Chavez Plaza. On May 3, 2022, City Council adopted Resolution No. 9145 to supersede Resolution Nr. 9102 by adding to the list of commemorative events, Mexican Independence Day.

ANALYSIS:
At the June 14, 2022 City Council meeting, through Announcements, Mayor Tran requested, and the City Council concurred by consent that staff bring forward an amendment to Resolution Nr. 9145. Since this item takes less than four (4) hours of staff time, staff is bringing forward for Council consideration an amendment to the Resolution directing staff to fly the Flag of India, in commemoration of India Independence Day on August 15. In accordance with the Municipal Code, a Commemorative Flag will be displayed for a period of time that is reasonable or customary for the subject that is to be commemorated, but no longer than 30 continuous days.

FISCAL IMPACT:
None.

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

RECOMMENDATION:
Adopt a Resolution to Supersede Resolution 9145 to Add the Commemoration of India Independence Day as a Flag-raising Event at Cesar Chavez Plaza.

Attachment(s):
Draft Resolution

RESOLUTION NO. ___

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS DIRECTING STAFF TO FLY COMMEMORATIVE FLAGS AT CESAR CHAVEZ PLAZA FOR CITY-SPONSORED EVENTS

WHEREAS, on August 1, 2017, the City Council (the "City Council") of the City of Milpitas Adopted Ordinance No. 260.2 relating to the display of flags on City-owned property; and

WHEREAS, on April 3, 2018, the City Council (the "City Council") of the City of Milpitas Adopted Resolution No. 9102 relating to the display of flags on City-owned property; and

WHEREAS, on May 3, 2022, the City Council (the "City Council") of the City of Milpitas Adopted Resolution No. 9145 relating to the display of flags on City-owned property superseding Resolution No. 9102; and

WHEREAS, the City Council (the "City Council") of the City of Milpitas intends this resolution to supersede Resolution No. 9145 relating to the display of flags on City-owned property; and

WHEREAS, pursuant to Milpitas Municipal Code Section I-600-2.30(3), the City Council may, by resolution, direct City staff to display Commemorative Flags as an expression of the City's official sentiments by any of the following means: (i) display in lieu of the MIA/POW flag on one of the four City Hall Display Flag Poles located at the rear of City Hall adjacent to the pond, (ii) display in lieu of the flag of the State of California on one of the three flag poles located at Cesar Chavez Plaza, or (iii) display through ground level ceremonies at any of the following locations at the Civic Center complex or the City of Milpitas Community Center:

(1) City Hall Rotunda
(2) Area adjacent to pond at City Hall
(3) Cesar Chavez Plaza
(4) City Council Chambers; and

WHEREAS, the City of Milpitas sponsors commemorative events, ceremonies and holidays annually in Cesar Chavez Plaza; and

WHEREAS, the City intends to fly certain Commemorative Flags in Cesar Chavez Plaza as part of the sponsored events, ceremonies and holidays, for certain periods; and

WHEREAS, in accordance with the Milpitas Municipal Code, the Commemorative Flags shall be displayed for a period that is reasonable or customary for the subject that is to be commemorated, but no longer than 30 days; and

WHEREAS, the periods of Commemorative Flags as approved by this Resolution may occur concurrently; and

WHEREAS, during such instance, multiple Commemorative Flags, but no more than three flags, may be raised on a flagpole from the top to the bottom in chronological descending order for the period approved in this Resolution.

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. Pursuant to Milpitas Municipal Code Section I-600-2.30(3), the City Council hereby directs staff to fly the following Commemorative Flags in lieu of the flag of the State of California at Cesar Chavez Plaza on the following dates and date ranges, after which staff shall resume flying the flag of the State of California unless the City Council directs otherwise by further resolution:

   - Black History Month – February 1 - 28,
   - Cesar Chavez Birthday– March 31,
   - Vietnamese Heritage Day – April 30,
   - Public Safety Appreciation Day – May 15,
   - Eritrea Independence Day – May 24,
   - LGBTQ Pride Celebration – June 1 – 30,
   - Philippine Independence Day – June 12,
   - Juneteenth – June 19,
   - India Independence Day – August 15,
   - Hispanic Heritage – September 15 – October 15,
   - Mexican Independence Day – September 16,
   - Filipino American History Month – October 1 – October 31,
   - Native American Heritage and Culture Month – November 1 – 30.

PASSED AND ADOPTED this _____ day of _____ 2022, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST: APPROVED:

_____ _____

Wendy Wood, City Clerk Rich Tran, Mayor

APPROVED AS TO FORM:

_____

Michael Mutalipassi, City Attorney

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Accept Water and Wastewater Arrearage Grants from the Water State Board, Authorize a subsidy for residential accounts with an outstanding balance of 85 days and over and Approve a Budget Appropriation of $248,048 for Grants and $80,000 for Residential Utility Account Subsidy (Staff Contact: Lauren Lai, Finance Director, 408-586-3111)**
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	6/21/2022
	Recommendation: (1) Accept Water and Wastewater Arrearage Grants from the Water State Board; (2) Authorize a subsidy for residential accounts with an outstanding balance of 85 days and over; and (3) Approve a budget appropriation of $248,048 for grants and $80,000 for residential utility account subsidy

Background:
On March 4, 2020, Governor Gavin Newsom proclaimed a state of emergency to exist in California as a result of the threat of COVID-19. It is the established policy of the State under Water Code section 106.3 that every human being has the right to safe, clean, affordable and accessible water adequate for human consumption, cooking, and sanitary purposes. In April 2020, a moratorium on discontinuance of water services was issued. The moratorium was to expire on December 31, 2021.

Pursuant to the Governor's moratorium, on March 2020 the Finance Department suspended the "Discontinuance of Residential and Non-Residential Service" provisions in City Municipal code Section VIII-1-6.10. Water utility services were not shutoff due to non-payment, and penalties were not levied.

On December 7, 2021, Council approved extending the suspension of the Discontinuance of Residential and Non-Residential Service policy after the moratorium expired on December 31, 2021 to March 31, 2022. Starting with April 1st utility bills, the Finance Department re-instated penalty, tagging and shutting off delinquent customers.

Earlier this year, Staff applied for the California Water and Wastewater Arrearage Payment Program Grants (Grants) which would provide funds to assist utility customers with outstanding utility bills with service from March 2020 to June 2021.

Analysis:
The City received the Grants from the California State Water Board to relieve the community water and wastewater system residential and commercial customers of the accrued water and wastewater arrearages (outstanding balances from March 2020 to June 2021) during the COVID-19 pandemic. Total amount of water arrearages funding received was $148,013 which includes $28,379 for 13 commercial accounts, $115,323 for 194 residential accounts, and 3% administrative cost of $4,311. Total amount of wastewater arrearages funding received was $100,035 which includes $24,738 for 13 commercial accounts, $72,838 for 163 commercial accounts, and 3% administrative cost of $2,914. The water grant was applied to eligible accounts in March 2022 and the wastewater grant was applied to eligible accounts in June 2022. Both of these grants assist residential and commercial accounts by reducing their balances for the respective period.

Customer Outreach

The City recognizes that water and wastewater services are essential and thus conducts extensive outreach in six (6) languages to utility customers and also offers payment plans to assist them in paying their bills.

The City's outreach is comprehensive and goes above and beyond the State mandate with these extra efforts: three (3) written notices, phone call(s), longer grace period to resolve outstanding balance before shutoff and offering payment plans. The City's customer outreach entails the following:

- As required by the State grant, the City mailed the customers to notify them of the amount credited to their accounts and offered to enroll customers with the remaining debt into a payment plan.
- Mailed the customers a "reminder letter" after the bill is outstanding for 23 days
- Mailed the customers a "final letter" after the bill is outstanding for 65 days
- Mailed a letter to customers with outstanding balances of 85 days and over, requesting updated customer contact information and offering payment plan
- Phone call and/or voice message alerting customers of outstanding balances, payment plan option and State Low Income Household Water Assistance Program (LIHWAP)

The table below summarizes the number of utility accounts as of June 10, 2022 that have outstanding balances of 85 days and over will be scheduled to be turned off each week based on the respective billing cycle of the accounts. As of June 10, 2022, 98.5% of all City utility accounts are current and/or not subject to the shutoff procedure. The total number of utility accounts with outstanding balances of 85 days and over is 265 accounts or 1.5% of all City utility accounts. The outstanding "85 days and over" balance owed to the City as of June 10, 2022 is $322,065, consisting of $170,147 for non-residential accounts and $151,918 for residential accounts.

Particulars	**Active Non-Residential Accounts**	**Active Residential Accounts**	**Total (All Accounts)**
TOTAL UTILITY ACCOUNTS	**2,226**	**14,938**	**17,164**
Number of Utility Accounts with Outstanding Balances of 85 days and over (% of Total Accounts)	19 (0.9%)	248 (1.6%)	265 (1.5%)
Total Amount Outstanding Balances of 85 days+ Due	$ 170,147	$ 151,918	$ 322,065
Percentage (%) Residential vs. Non-Residential of Outstanding Balances of 85 days and over	53%	47%	100%

<u>Authorize Subsidy for Residential Accounts</u>

The Utilities Subsidy Fund has a current balance of approximately $442,000 which is comprised of collected utility penalties. This Utility Subsidy Fund is used as the funding source for the on-going Milpitas Assistance Program (MAP) for low income qualified utility billing assistance. However, appropriating $80,000 from this Utility Subsidy Fund would allow Staff to administer a utility subsidy program. The eligibility and parameters of the program will be as follows:

1. Residential accounts outstanding with balances over 85 days as of June 10, 2022
2. Subsidize 50% of the residential outstanding balances of 85 days and over (as of June 10, 2022)
3. Require that the customer addresses all other outstanding balances via payoff or payment plan
4. Continue reminder notice, final notice and penalties for payment plan
5. Require any payment plan to be kept current with 5-day grace period
6. Require payment of future utility bills
7. Failure to comply with #5 and #6 prompts immediate shutoff procedures (reminder notice, final notice, phone call, tag and ultimately utility shutoff)

This policy and subsidy program is a one-time, short-term program that will enable residents to transition during this COVID recovery. Once the $80,000 appropriation is exhausted, the utility billing subsidy will end; however,

qualified residents can continue to take advantage of on-going programs such as Milpitas Assistance Program ("MAP") for utility assistance.

The proposed $80,000 appropriation will retain Utility Subsidy Fund balance to provide for the on-going Milpitas Assistance Program. While this is a customer-oriented program, there may be residents that do not take advantage of this subsidy program, and as such, Staff will follow the shutoff procedures which includes significant outreach, payment plan options and ultimately utility shutoff as necessitated.

Non-Residential Accounts
The City has provided assistance to small business via multiple programs including Community Development Block Grants ("CBDG") and America Rescue Plan Act ("ARPA") grants, applying the State water and wastewater grants for the respective outstanding utility balances, and providing over two (2) years of utility shutoff moratorium (suspending penalties and shutoff). Given the high outstanding balances and limited Utility Subsidy Fund balance, Staff will follow the utility shutoff procedures which includes significant outreach as described above including payment plan options and ultimately shutoff as necessitated.

Policy Alternative:
Alternative: Implement the City Municipal code Section VIII-1-6.10 "Discontinuance of Residential and Non-Residential Service" and restore the shut off process.

Pros: Collection of fee revenues and implement City municipal code.

Cons: Milpitas residents and small businesses may not have enough time to pay off the outstanding utility bill before potential shut off.

Reason not recommended: The City may consider quality of life to our residents and businesses; and provide program support and flexibility where possible during this pandemic.

Fiscal Impact:
The acceptance of both grants from the California State Water Board totaling $248,048 would assist customers and reduce the potential of utility revenue loss. The one-time residential account utility subsidy appropriation is $80,000.

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) Guidelines Section 15061 (b)(3). The action is also exempt under CEQA Guideline 15378(b)(4) as a governmental fiscal activity not involving a commitment to any specific project.

Recommendation:
1. Accept Water and Wastewater Arrearage Grants from the Water State Board;
2. Authorize a subsidy for residential accounts with an outstanding balance of 85 days and over; and
3. Approve a budget appropriation of $248,048 for grants and $80,000 for residential utility account subsidy

Attachments:
1. Budget Change Form

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From*		To*	
	Account	Amount	Account	Amount
Check one: ☐ **Budget Appropriation** ☐ **Budget Transfer**	400-3551 450-3551 109-2940	$148,013 $100,035 $80,000	400-9104209 450-9104209 109-9104209	$148,013 $100,035 $80,000

Accept Water and Wastewater Arrearage Grants from the Water State Board, Authorize a subsidy for residential accounts with an outstanding balance of 85 days and over and Approve a Budget Appropriation of $248,048 for Grants and $80,000 for Residential Utility Account Subsidy.

Background:
On March 4, 2020, Governor Gavin Newsom proclaimed a state of emergency to exist in California as a result of the threat of COVID-19. It is the established policy of the State under Water Code section 106.3 that every human being has the right to safe, clean, affordable and accessible water adequate for human consumption, cooking, and sanitary purposes. In April 2020, a moratorium on discontinuance of water services was issued. The moratorium will expire on December 31, 2021.

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On December 7, 2021, Council approved extending the suspension of the Discontinuance of Residential and Non-Residential Service policy after the moratorium expires on December 31, 2021 to March 31, 2022. Starting with April 1st utility bills, the Finance Department re-instated penalty and late fees charges and tagging and shutting off delinquent customers.

Earlier this year, Staff applied for the California Water and Wastewater Arrearage Payment Program Grants ("Grants") which would provide funds to assist utility customers with outstanding utility bills with service from March 2020 to June 2021.

Analysis:
The City received the "Grants" from the California State Water Board to relieve the community water and wastewater system residential and commercial customers of the accrued water and wastewater arrearages (outstanding balances from March 2020 to June 2021) during the COVID-19 pandemic. Total amount of water arrearages funding received was $148,013 which includes $28,379 for 13 commercial accounts, $115,323 for 194 residential accounts, and 3% administrative cost of $4,311. Total amount of wastewater arrearages funding received was $100,035 which includes $24,738 for 13 commercial accounts, $72,838 for 163 commercial accounts, and 3% administrative cost of $2,914. The water grant was applied to eligible accounts in March 2022 and the wastewater grant was applied to eligible accounts in June 2022. Both of these grants assist residential and commercial accounts by reducing their balances for the respective period.

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- Phone call and/or voice message alerting customers of outstanding balances and payment plan option

The table below summarizes the number of utility accounts as of June 10, 2022 that have outstanding balances of 85 days and over will be scheduled to be turned off each week based on the respective billing cycle of the accounts. The outstanding “85 days and over” balance owed to the City as of June 10, 2022 is $322,065, consisting of $170,147 for non-residential accounts and $151,918 for residential accounts.

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Authorize Subsidy for Residential Accounts

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1. Residential accounts outstanding with balances over 85 days as of June 10, 2022
2. Subsidize 50% of the residential outstanding balances of 85 days and over (as of June 10, 2022)
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6. Require payment of future utility bills
7. Failure to #5 and #6 prompts immediate shutoff procedures (reminder notice, final notice, phone call, tag and ultimately utility shutoff)

This policy and subsidy program is a one-time, short-term program that will enable residents to transition during this COVID recovery. Once the $80,000 appropriation is exhausted, the utility billing subsidy will end; however, qualified residents can continue to take advantage of on-going programs such as Milpitas Assistance Program (“MAP”) for utility assistance.

The proposed $80,000 appropriation will retain Utility Subsidy Fund balance to provide for the on-going Milpitas Assistance Program. While this is a customer-oriented program, there may be residents that do not take advantage of this subsidy program, and as such, Staff will follow the shutoff procedures which includes significant outreach, payment plan options and ultimately utility shutoff as necessitated.

Non-Residential Accounts

The City has provided assistance to small business via multiple programs including Community Development Block Grants (“CBDG”) and America Rescue Plan Act (“ARPA”) grants, applying the State water and

wastewater grants for the respective outstanding utility balances, and providing over two (2) years of utility shutoff moratorium (suspending penalties, late fees and shutoff). Given the high outstanding balances and limited Utility Subsidy Fund balance, Staff will follow the utility shutoff procedures which includes significant outreach as described above including payment plan options and ultimately shutoff as necessitated.

Policy Alternative:
Alternative: Implement the City Municipal code Section VIII-1-6.10 "Discontinuance of Residential and Non-Residential Service" and restore the shut off process.

Pros: Collection of fee revenues and implement City municipal code.

Cons: Milpitas residents and small businesses may not have enough time to pay off the outstanding utility bill before potential shut off.

Reason not recommended: The City may consider quality of life to our residents and businesses; and provide program support and flexibility where possible during this pandemic.

Fiscal Impact:
The acceptance of both grants from the California State Water Board totaling $248,048 would assist customers and reduce the potential of utility revenue loss. The one-time residential account utility subsidy appropriation is $80,000.

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) Guidelines Section 15061 (b)(3). The action is also exempt under CEQA Guideline 15378(b)(4) as a governmental fiscal activity not involving a commitment to any specific project.

Recommendation:

1. Accept Water and Wastewater Arrearage Grants from the Water State Board;
2. Authorize a subsidy for residential accounts with an outstanding balance of 85 days and over; and
3. Approve a budget appropriation of $248,048 for grants and $80,000 for residential utility account subsidy

Attachments:

1. Budget Change Form

☐ **Check if City Council Approval required.** **Meeting Date**: June 21, 2022

Requested by:	**Department Head:** Lauren Lai	**Date:** June 21, 2022
Reviewed by:	**Finance Director:** Lauren Lai	**Date:** June 21, 2022

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:	**Consider Recommendations from Mayor Tran for Appointments to City Commissions (Contact: Mayor Tran, 408- 586-3029)**
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	6/21/2022
	Recommendation: Receive Mayor Tran's recommendation and approve the appointment to Economic Development and Trade Commission.

Background:
The City of Milpitas has 13 Commissions (including Measure F Oversight Committee), with the members appointed by the Mayor and confirmed by the City Council, that advise the Milpitas elected officials on a variety of community interest and policy areas. Mayor Tran is making the following recommendation for a Commissioner appointment.

Economic Development and Trade Commission

1. Appoint Cheri Romero to serve as Commissioner for the Real Estate seat with a short-term to expire April 2024.

Analysis:
Any resident interested in serving on a City Commission must complete a Commission Application and submit the form to the City Clerk. Copies of the applications are provided to the Mayor for his consideration. Per Government Code 40605, in a general law city where the office of Mayor is an elective office, the Mayor with the approval of the City Council, shall make all appointments to boards, commissions, and committees unless otherwise specifically provided by statute.

Fiscal Impact:
There is no fiscal impact associated with this item.

Recommendation:
Receive Mayor Tran's recommendation and approve the appointment to the Economic Development and Trade Commission.

Attachments:
1. Application

COMMISSION/COMMITTEE APPLYING FOR:	Economic Development and Trade Commission
Name	Cheri Elizabeth Romero
Address Type	Residence
Address	[redacted]
City	Milpitas
Postal/Zip Code	95035
Mobile Number	[redacted]
E-Mail Address	[redacted]

Present Employer	Self Employed-Keller Williams Silicon City
Business Address (Optional)	2221 Oakland Rd. #268
City	San Jose
Postal / Zip code	95131
Occupation	Realtor®
Education: If Youth Advisory Commission applicant, indicate your grade/school:	Bachelor of Arts Degree Business of Administration
College, Professional, Vocational, or other schools attended	Studied In Spain, Real Estate School, additional education opportunites

List community organizations to which you belong or have belonged (additional information may be attached).

Name of Organization	Milpitas Knights
Member	Parent Participant
Name of Organization	PTA
Member	membership
Name of Organization	NHORA
Member	BOD

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):

My family and I have been an integral part of the community for more that four decades. We have participated in many community events.
*9-11 *firestation events *mayoral events *relay for life *casa azteca community events *day of the dead community fundraising events 2021 and 2022*William burnett events**mhs events**
Too many events to mention.
** Yo hablo español.*** I speak fluent Spanish.***

I currently work as a realtor®. I believe that my expertise in the real estate industry and the connections I have with

the community can be a bridge to making meaningful and fruitful advances for and within the City of Milpitas love!

Upload a File	[redacted]
Date	Jun 15, 2022
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.	cheri romero

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:	**Approve the City Council Policy for Naming Streets, Parks and Facilities (Staff Contact: Renee Lorentzen, Director of Recreation and Community Services, 408-586-3409)**
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	6/21/2022
	Recommendation: Approve the City Council Policy for Naming Streets, Parks and Facilities.

BACKGROUND:

On February 26, 2019, City Council sunset the Streets, Parks and Facilities Naming Subcommittee and directed staff to assign naming recommendations for streets to the Planning Commission and for parks and facilities to the Parks, Recreation and Cultural Resources Commission. Based on the City Council direction and the input from the previous Naming Subcommittee, staff developed an updated policy in the new City Council Policy format for naming streets, parks and facilities.

On May 3, 2022, staff brought a draft revision of the updated City Streets, Parks and Facilities Naming Policy to City Council for discussion and further direction. Through this discussion, City Council asked that the following changes be incorporated into the final policy:

- No elected official be eligible for having their name added to a list or have a street, park or facility named after them, and
- A City Council subcommittee be formed to review and make naming recommendations to the City Council.

Additionally, it was also requested that efforts to garner new names for the Naming Lists be conducted with the community.

ANALYSIS:

Based on general Council consensus and staff presentation during the May 3 City Council meeting, staff updated sections of the final policy as follows.

Policy Sections

Section 2.2 in the Policy section reads: “The City Council Ad Hoc Naming Subcommittee shall evaluate names of City streets, parks and facilities, and shall make recommendations to the City Council.”

Section 2.7.9 in the Policy section reads: “No seated elected official shall have their name added to a naming list or have a street, park or facility named after them while serving on the City Council.”

Section 3.2.1 in the Procedure section reads: “City street, park and facilities naming recommendations shall be brought to the City Council Ad Hoc Naming Subcommittee for recommendation to the City Council and may be considered at any regular or special City Council meeting.”

Next Steps

After approval of the City Council Policy for Naming Streets, Parks and Facilities, staff will return in August with an agenda item to establish the City Council Ad Hoc Naming Subcommittee. Once the Committee is established, staff will seek input regarding community outreach to update names to the Naming Lists. Per the Policy, any changes to the Naming Lists require Council approval.

FISCAL IMPACT:
There is no fiscal impact with the approval of this policy.

RECOMMENDATION:
Approve the City Council Policy for Naming Streets, Parks and Facilities.

Attachment(s):
Draft Streets, Parks and Facilities Naming Policy

CITY OF MILPITAS

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

CITY COUNCIL POLICY

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

1. PURPOSE

1.1. This Policy establishes the guidelines, criteria, and processes for naming City streets, parks, and other facilities.

1.2. This Policy is consistent with Milpitas Municipal Code, Title XI-1000 and Government Code Section 34093.

2. POLICY

2.1. The City shall have the sole authority and the City Council shall have the final authority to approve names of City Streets, Parks, and other Facilities.

2.2. The City Council Ad Hoc Naming Subcommittee shall evaluate names of City streets, parks and facilities, and shall make recommendations to the City Council.

2.3. Although the City will have full control and final decision-making authority on any names selected, public input will be received, and other names may be raised and requested to be considered by the City Council.

2.4. From time to time, the City Council shall approve names to be added to a list(s) of names suitable for streets, parks, and facilities.

2.5. No duplication of names within an asset type (i.e., park, facility, plaza) will be approved.

2.6. A deliberative process by City staff will be conducted to ensure that renaming of a street, park, and facility will not diminish the original justification for the name of the prior contributors. Parks and facilities named after individuals shall not be changed unless it is found that because of the individual's character the continued use of their name would not be in the best interest of the community. Parks that have been named by deed restriction shall not be considered for renaming.

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

- 2.7.1. Neighborhood or geographical identification, such as street, school, or other descriptive names;
- 2.7.2. Natural or geological features of the area;
- 2.7.3. Historical or cultural significance: the name of a historical figure can be considered, if the figure had a significant and extraordinary historical influence on the area, state, national, or international level;

2.7.4. The name of any person or family that has made a significant impact in the community and/or in development of the street, park, or facility;

2.7.5. An individual or organization that contributed significantly to the acquisition or development of the park or facility to be named. This can include either a deed or substantial monetary contribution, or contribution toward the acquisition, and/or development of the park of facility. (Naming rights are not guaranteed if the donation is a dedication as required by the subdivision.)

2.7.6. The articulated preference of residents of the neighborhood surrounding the street, park, facility;

2.7.7. A name should represent community values and consider future generations and ethnic diversity;

2.7.8. If the name of an individual or family is to be considered, the use of such name shall have the approval of the individual (or his/her surviving family) or family when reasonably possible;

2.7.9. No seated elected official shall have their name added to a naming list or have a street, park or facility named after them while serving on the City Council.

2.7.10. Avoid confusing or similar sounding names (Public Safety Dispatch test);

2.7.11. Avoid changing street names along any continuous alignment (Continuity test).

2.8. Naming of parks and facilities near schools shall be coordinated with the Milpitas Unified School District as much as possible.

2.9. All naming and/or renaming of a park or facility will be set forth by a Council Resolution.

2.10. Should policy conflict with any City Ordinance, Code or other laws and regulations, the respective City Ordinance, Code or other laws and regulations shall prevail.

3. PROCEDURE

3.1. Maintaining a List of Names for Naming Streets, Parks, and Facilities.

3.1.1. The Recreation and Community Services Department shall maintain a List of Names for Naming Streets, Parks, and Facilities.

3.1.2. As needed, the Director of Recreation and Community Services shall bring additions to the List of Names for Naming Streets, Parks, and Facilities to Council for approval at any regular or special City Council meeting.

3.2. Naming of Streets, Parks, and Facilities

3.2.1. City street, park and facilities naming recommendations shall be brought to the City Council Ad Hoc Naming Subcommittee for recommendation to the City Council and may be considered at any regular or special City Council meeting.”.

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

3.3. Proposed names for new City streets, parks, and facilities should be considered during the entitlement process prior to the final map approval.

3.4. Names being considered for streets shall be reviewed by the City and County emergency services dispatch and Post Office to discourage names that are too similar or confusing that may hinder emergency response; or are otherwise inappropriate for public safety purposes.

3.5. The following City Departments will contribute to the establishment and maintenance of databases for named streets, parks, and facilities:

- 3.5.1. Information and Technology Department – Maintain database of all City assets (streets, parks, and facilities)
- 3.5.2. Recreation and Community Services Department – Maintain Naming Lists, information about historical references, person's full names, ancestry, dates of birth and death, and other information of interest about the person or group, and the significance of their name to Milpitas' history and/or to that particular named asset.
- 3.5.3. Planning Department – Coordinate Street Naming related to new development, prepare, and maintain GIS databases for mapping of new facilities.

3.6. Renaming of a street, park, or facility

- 3.6.1. The renaming of a street, park, or facility may be initiated by City Council, City Commission, City staff, a group, or individuals.
- 3.6.2. The initiation of renaming by non-City organizations or individuals shall be made by participating during Public Forum at the appropriate advisory City Commission or City Council meeting.
- 3.6.3. The City Commission may place the request on the agenda for review of the proposed name(s), taking of public comment, and discussion of the renaming proposal consistent with this Policy.
- 3.6.4. When a City Commission considers the renaming proposal of a street, park, or facility, staff shall notify the surrounding neighborhood in a ¼ mile radius.
- 3.6.5. If the City Commission supports the renaming proposal, it will make a recommendation to the City Council for Council consideration.

3.7. The name of a park or facility that is sold, transferred to non-city ownership, or otherwise deemed to no longer be a City of Milpitas property, should be transferred to another location eligible for naming. Should there not be an appropriate location, the name shall be added to the appropriate Naming List for future use.

CITY OF MILPITAS

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

CITY COUNCIL POLICY

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

1. PURPOSE

1.1. This Policy establishes the guidelines, criteria, and processes for naming City streets, parks, and other facilities.

1.2. This Policy is consistent with Milpitas Municipal Code, Title XI-1000 and Government Code Section 34093.

2. POLICY

2.1. The City shall have the sole authority and the City Council shall have the final authority to approve names of City Streets, Parks, and other Facilities.

~~2.2.~~ The City Council Ad Hoc Naming Subcommittee shall evaluate names of City streets, parks and facilities, and shall make recommendations to the City Council.~~The City Council Naming AdHOC committee shall evaluate names of City streets, and shall make recommendations to the City Council.~~

~~2.3.~~2.2. ~~The Parks, Recreation, and Cultural Resources Commission shall evaluate names of City parks and facilities, and shall make recommendations to the City Council.~~

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3.2.1. City street, park and facilities naming recommendations shall be brought to the City Council Ad Hoc Naming Subcommittee for recommendation to the City Council and may be considered at any regular or special City Council meeting."~~City street naming recommendations shall be brought to the Planning Commission for recommendation to the City Council and may be considered at any regular or special meeting~~.

~~3.2.2. City park and facility naming recommendations shall be brought to the Parks, Recreation, and Cultural Resources Commission for recommendation to the City Council and may be considered at any regular or special meeting.~~

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3.6.3. The City Commission may place the request on the agenda for review of the proposed name(s), taking of public comment, and discussion of the renaming proposal consistent with this Policy.

3.6.4. When a City Commission considers the renaming proposal of a street, park, or facility, staff shall notify the surrounding neighborhood in a ¼ mile radius.

3.6.5. If the City Commission supports the renaming proposal, it will make a recommendation to the City Council for Council consideration.

3.7. The name of a park or facility that is sold, transferred to non-city ownership, or otherwise deemed to no longer be a City of Milpitas property, should be transferred to another location eligible for naming. Should there not be an appropriate location, the name shall be added to the appropriate Naming List for future use.

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Reconfirm Findings and Determinations Under Resolution No. 9165 and Assembly Bill 361 for the Continuation of Virtual Meetings of the City Council and Legislative Bodies (Staff Contact: Michael Mutalipassi, City Attorney, 408-586-3040)**
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	6/21/2022
	Recommendation: Move to reconfirm findings and determinations under Resolution No. 9165 and Assembly Bill 361 for the continuation of virtual meetings of the City Council and Legislative Bodies.

Background:
On March 17, 2020, in the face of the COVID-19 pandemic, Governor Gavin Newsom issued Executive Order N-29-20 suspending certain provisions of the Ralph M. Brown Act in order to allow for local legislative bodies to conduct their meetings completely telephonically or by other electronic means.

The provisions in the Brown Act that were suspended by the Governor's Executive Order are contained at Government Code Section 54953(b)(3) and require that when teleconferencing is used, outside of a statewide emergency, that the following occur:

- An agenda is required to be posted at all locations, including any teleconference locations
- Each teleconference location must be identified on the actual agenda
- Each teleconference location shall be accessible to the public
- A quorum of the legislative body must be in the jurisdiction

With the Governor's Executive Order, the four above requirements were suspended, allowing Councilmembers to not have to post an agenda at their teleconference location, not have to identify their location on the meeting agenda, not have to ensure public accessibility at the teleconference location, and the legislative body did not need a quorum present in the jurisdiction. As the Council is well aware, this allowed all City Council meetings and other meetings of legislative bodies of the City to be conducted by Zoom with councilmembers, commission members, committee members, and staff all joining from remote virtual locations.

The suspension of certain provisions of the Brown Act was further extended by the Governor on June 11, 2021 by the issuance of Executive Order N-08-21 which continued to allow for complete virtual meetings until September 30, 2021.

With the expiration of the Governor's Executive Order and the uncertainty that surrounded the Governor's potential recall, the State Legislature also took the remote meeting issue into its own hands through the adoption of Assembly Bill 361, which is explained in more depth in the Analysis section below.

On May 17. 2022, the City Council adopted Resolution No. 9156, making findings that there is an existing State of Emergency and that state or local officials continue to recommend social distancing measures to prevent the spread of COVID-19. In particular, the resolution included reference to Cal-OSHA regulation 3205, which

recommends physical distancing in the workplace. By motion and majority vote, the City Council may reconfirm the findings of Resolution No. 9156 and continue to hold virtual meetings pursuant to AB 361.

Analysis:
On September 16, 2021, the Governor signed AB 361, which allows legislative bodies to meet virtually provided there is a state of emergency declared by the Governor, and either (1) state or local officials have imposed or recommended measures to promote social distancing; or (2) the legislative body determines by majority vote that meeting in person would present imminent risks to the health and safety of attendees. The Governor by executive order signed on September 20, 2021, suspended the effective date of AB 361 to October 1, 2021. As a result, if the City desires to have virtual meetings on or after October 1, 2021, it must do so consistent with the requirements of AB 361.

AB 361 preserves many of the provisions of the earlier executive orders, including the suspension of the four teleconferencing requirements noted above, while also adding new requirements to the management of remote and teleconference public meetings in order to better achieve the levels of transparency that the Brown Act demands. Specifically, AB 361 imposes two new rules on remote public meetings:

1. Local governments and agencies hosting teleconference meetings in lieu of traditional in-person public meetings must permit direct public comment during the teleconference and must leave open the opportunity for public comment until the comment period for a given item is closed during the ordinary course of the meeting. The opportunity to make public comment must be of a sufficient duration so as to allow actual public participation.

2. Any action by the governing body during a public teleconference meeting must occur while the agency is actively and successfully broadcasting to members of the public through a call-in option or an internet-based service option. If a technical disruption within the agency's control prevents members of the public from either viewing the meeting of the public agency or prevents members of the public from offering public comment, the agency must cease all action on the meeting agenda until the disruption ends and the broadcast is restored. Action taken during an agency-caused disruption may be challenged as a violation of the Brown Act.

In order to continue to qualify for AB 361's waiver of in-person meeting requirements, the City Council must, within thirty (30) days of its first meeting under AB 361, and every thirty (30) days thereafter, make findings that (a) state or local officials continue to recommend measures to promote social distancing, or that (b) an in-person meeting would constitute an imminent risk to the safety of attendees.

The above conditions continue to exist at this time, and staff recommends that the City Council by motion reconfirm the findings made in Resolution No. 9156 so that the City Council and all other subordinate legislative bodies may continue to meet virtually.

Lastly, it is important to note that AB 361 is optional. If the City Council wishes, it may meet in person. In addition, hybrid meetings are permissible.

Policy Alternatives:
Alternative 1: Do not by motion reconfirm the findings made in the resolution making findings and determinations under Assembly Bill 361 for the continuation of virtual meetings**.**

Pros: None
Cons: Many of the existing Commission, Committee, and Task Force meetings will not be able to meet virtually or through a hybrid format forcing all staff, commission or committee members, and the public to attend meetings in person.

Reason not recommended: The COVID-19 pandemic continues to be a global health issue and by forcing commission, committee, and task force meetings to be in person, public health may be put at risk.

Fiscal Impact:

The City Council's reconfirmation of the findings made in the resolution to continue with virtual meetings will maintain the status quo and no financial impact is anticipated by the reconfirmation of the findings.

California Environmental Quality Act:
The City Council's reconfirmation of the findings made in the resolution is not a project under the California Environmental Quality Act (CEQA) Guideline 15378(b)(5) as it constitutes an organizational or administrative activity of the government that will not result in direct or indirect physical changes in the environment. Further, virtual meetings are likely to reduce certain impacts associated with vehicular travel related to in-person public meetings.

Recommendation:
Move to reconfirm findings and determinations under Resolution No. 9105 and Assembly Bill 361 for the continuation of virtual meetings of the City Council and Legislative Bodies.

Attachment
1. Resolution 9165

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Authorize the City Manager to Reject All Proposals for RFP No. 22-058 for Abandoned Shopping Cart Retrieval Services (Staff Contact: Sharon Goei, Building Safety and Housing Director, 408-586-3260; and Chris Schroeder, Purchasing Agent, 408-586-3161)**
Category:	Consent Calendar-Community Development
Meeting Date:	6/21/2022
	Recommendation: Authorize the City Manager to Reject All Proposals for RFP No. 22-058 for Abandoned Shopping Cart Retrieval Services.

Background:
The current shopping cart services vendor for the City of Milpitas has been providing the City with shopping cart collection services since March of 2002. During this time, the City of Milpitas has conducted five Requests for Proposals (RFPs) for shopping cart services, most recently in 2012 and 2017.

These services provide the retrieval of shopping carts left abandoned throughout the City. Carts that belong to participating stores are counted and returned to the participating stores. The City then invoices the stores for collecting and returning the abandoned shopping carts. Carts that belong to non-participating stores are impounded and stored at a storage yard, and if not collected by the non-participating stores, the carts are recycled or disposed of. The shopping cart vendor works with City Departments and uses information in the MyMilpitas App on the SeeClickFix platform to locate and collect abandoned shopping carts.

The contract with the current provider Alice Wright expires on June 30, 2022. The Building Safety and Housing Department began the RFP process with Finance on January 3, 2022.

Analysis:
Shopping cart services retrieve abandoned shopping carts and return them to the appropriate businesses to eliminate visual blight from the City's streets and neighborhoods, as well as to help Milpitas businesses reduce the cost of replacing shopping carts. During the last twenty years, the number of carts being collected has increased from approximately 450 shopping carts per month to nearly 750 shopping carts per month for an estimated annual total of 9,000 shopping carts per year.

The Purchasing Division of the Finance Department (Purchasing) and the Code Enforcement team in the Building Safety and Housing Department jointly developed the specifications for a Request for Proposal for abandoned shopping cart retrieval services.

On February 25, 2022, Purchasing issued RFP No. 22-058 for Abandoned Shopping Cart Retrieval Services. A total of 307 companies viewed the RFP, 15 downloaded the RFP, and 3 companies submitted a response. On March 31, 2022, three proposals in response to the RFP were received. One proposal was disqualified for being non-compliant with submittal requirements. The proposals were evaluated by a 5-member panel composed of representatives from the Department of Public Works, Human Resources, Recreation and Community Services, and Building Safety and Housing, as well as Redwood City Building Inspection and Code Enforcement Services. The evaluation criteria included the cover letter, company profile, execution plan, personnel assigned, proposed compensation, and references. The results are detailed below.

Company Name	Score	5-Year Contract Dollar Amount
All American Shopping Carts	Disqualified	--
Alice Wright	56.4	$174,600.00
CityWide Cart Savers, LLC.	89.8	$112,500.00

CityWide Cart Savers, LLC. is the proposer offering the most advantageous proposal for this service after consideration of all evaluation criteria.

At the City Council meeting on June 7, 2022, CityWide Cart Savers, LLC. withdrew their proposal and the item was continued to a future Council meeting.

The other responsive proposal from Alice Wright is $62,100, or 55% higher, than CityWide Cart Savers' proposal. It is thus in the City's best interest to conduct a new RFP to seek more competitive pricing. In addition, through further discussions on the scope of services, staff recognized the need to refine the scope with respect to the handling of individual belongings in carts and their associated storage and management at the City's corporation yard.

Per Section 30 of the RFP, REJECTION OF PROPOSALS AND WAIVER OF INFORMALITIES, "The City reserves the right to cancel the RFP and make no award."

Staff recommends that City Council authorize the City Manager to Reject All Proposals for RFP No. 22-058 for Abandoned Shopping Cart Retrieval Services.

Policy Alternative:
Alternative: Award RFP No. 22-058 to Alice Wright.

Pros: None.
Cons: Alice Wright's proposal is significantly higher in cost than the lowest proposal. Also, the City needs to refine the scope of services as noted earlier.
Reason not recommended: As described above, it is in the best interest of the City to conduct a new RFP so that the scope of services may be refined, and a competitive bid process may take place.

Fiscal Impact:
None.

California Environmental Quality Act:
In accordance with CEQA Guidelines Section 15378(b)(2), action on this item is not a project subject to CEQA because it will not cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment and involves continuing administrative or maintenance activities.

Recommendation:
Authorize the City Manager to Reject All Proposals for RFP No. 22-058 for Abandoned Shopping Cart Retrieval Services.

Attachment:
None.

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Approve and Authorize the City Manager to Execute Amendment No. 4 to the Shopping Cart Retrieval Services Contract with Alice Wright (Staff Contact: Sharon Goei, Building Safety and Housing Director, 408-586-3260; and Chris Schroeder, Purchasing Agent, 408-586-3161)**
Category:	Consent Calendar-Community Development
Meeting Date:	6/21/2022
	Recommendation: Approve and authorize the City Manager to execute Amendment No. 4 to the Shopping Cart Retrieval Services Contract with Alice Wright, adding a one-year extension to the five-year contract, for a total of six years and increasing the total not-to-exceed amount by $34,920.00 from $111,384.62 to $146,304.62.

Background:
The current shopping cart services vendor for the City of Milpitas has been providing the City with shopping cart collection services since March of 2002. During this time, the City of Milpitas has conducted five Requests for Proposals (RFPs) for shopping cart services, most recently in 2012 and 2017.

These services provide the retrieval of shopping carts left abandoned throughout the City. Carts that belong to participating stores are counted and returned to the participating stores. The City then invoices the stores for collecting and returning the abandoned shopping carts. Carts that belong to non-participating stores are impounded and stored at a storage yard, and if not collected by the non-participating stores, the carts are recycled or disposed of. The shopping cart vendor works with City Departments and uses information in the MyMilpitas App on the SeeClickFix platform to locate and collect abandoned shopping carts.

The contract with the current provider Alice Wright expires on June 30, 2022. The Building Safety and Housing Department began the RFP process with Finance on January 3, 2022.

Analysis:
Shopping cart services retrieve abandoned shopping carts and return them to the appropriate businesses to eliminate visual blight from the City's streets and neighborhoods, as well as to help Milpitas businesses reduce the cost of replacing shopping carts. During the last twenty years, the number of carts being collected has increased from approximately 450 shopping carts per month to nearly 750 shopping carts per month for an estimated annual total of 9,000 shopping carts per year.

The Purchasing Division of the Finance Department (Purchasing) and the Code Enforcement team in the Building Safety and Housing Department jointly developed the specifications for a Request for Proposal for abandoned shopping cart retrieval services.

On February 25, 2022, Purchasing issued RFP No. 22-058 for Abandoned Shopping Cart Retrieval Services. The City received three proposals, one of which was disqualified. The two proposals from Alice Wright and CityWide Cart Savers, LLC. were evaluated by a panel based on several criteria. Based on the criteria, the panel rated the proposal from CityWide Cart Savers, LLC. as the most advantageous. It was also significantly lower in cost than the proposal from Alice Wright.

At the City Council meeting on June 7, 2022, CityWide Cart Savers, LLC. withdrew their proposal and the item was continued to a future Council meeting.

The other responsive proposal from Alice Wright is $62,100, or 55% higher, than CityWide Cart Savers' proposal. It is thus in the City's best interest to conduct a new RFP to seek more competitive pricing. In addition, through further discussions on the scope of services, staff recognized the need to refine the scope with respect to the handling of individual belongings in carts and their associated storage and management at the City's corporation yard.

Per Section 30 of the RFP, REJECTION OF PROPOSALS AND WAIVER OF INFORMALITIES, "The City reserves the right to cancel the RFP and make no award."

In a separate agenda report, for the reasons described above, staff noted that it is in the City's best interest to conduct a new RFP so that the scope of services may be refined, and a competitive bid process may take place. In that agenda report, staff recommends that City Council authorize the City Manager to Reject All Proposals for RFP No. 22-058 for Abandoned Shopping Cart Retrieval Services.

Due to the necessity of continuing the shopping cart retrieval services, a one-year extension of the current contract was proposed to Alice Wright, who accepted the proposal with the condition that the price per cart be increased from $3.00 per shopping cart to $3.88 per shopping cart due to rising fuel costs and high inflation. This is an increase of $0.88 per cart, or 29% increase, over the current contract shopping cart retrieval rate. Given the need to continue this important service beyond the expiration of the current contract on June 30, staff is recommending moving forward with the one-year extension at the higher rate per cart.

Attachment 1 contains Amendment No. 4 to the contract for Abandoned Shopping Cart Retrieval Services with Alice Wright, incorporating the amount of $34,920 ($3.88 per cart x 9,000 carts) for fiscal year 2022-2023.

Policy Alternative:
Alternative: Do not execute Amendment No. 4 with Alice Wright for shopping cart retrieval services.

Pros: None.
Cons: The City will not have shopping cart retrieval services.
Reason not recommended: A gap in the provision of shopping cart retrieval services will add further occurrences of blight in the City.

Fiscal Impact:
A funding amount of $30,000 was budgeted in FY2022-2023 and an additional $4,920 will come from the Building Safety and Housing Department operating budget.

California Environmental Quality Act:
In accordance with CEQA Guidelines Section 15378(b)(2), action on this item is not a project subject to CEQA because it will not cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment and involves continuing administrative or maintenance activities.

Recommendation:
Approve and authorize the City Manager to execute Amendment No. 4 to the Shopping Cart Retrieval Services Contract with Alice Wright, adding a one-year extension to the five-year contract, for a total of six years and increasing the total not-to-exceed amount by $34,920.00 from $111,384.62 to $146,304.62.

Attachment:
1. Amendment No. 4 to the Contract for Abandoned Shopping Cart Retrieval Services with Alice Wright

AMENDMENT NO. 4 TO THE CONTRACT WITH ALICE WRIGHT FOR ABANDONED SHOPPING CART RETRIEVAL SERVICES

This Amendment is entered into as of _____ by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "City") and **Alice Wright**, a sole proprietor (hereafter referred to as "CONTRACTOR"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Amendment.

RECITALS

WHEREAS, on May 11, 2017, the Parties entered into a Contract for Abandoned shopping Cart Retrieval Services ("Contract"); with a term period of July 1, 2017, to June 30, 2018, and with four (4) one-year options for the City to extend the Contract, and a compensation amount for the first year not-to-exceed $72,000.00; and

WHEREAS, on June 28, 2018, the Parties entered into Amendment No 1 to the Contract to increase the compensation amount by $4,639.50 for contract year two, for a contract year two total of $19,039.50, and by $5,100.00 for contract years one, two, three, four and five for a new, annual contract amount of $19,500.00 for contract years two, three, four and five, resulting in a new not-to-exceed total Contract amount of $97,039.50 for all five years, should all four Options to extend the Contract be exercised; and

WHEREAS, on August 8, 2018, the Parties entered into Amendment No. 2 to the Contract to increase the compensation amount by $2,100.00 for contract years one, three, four and five, for a new annual contract amount of $21,600.00 for contract years one, three, four and five, and $21,139.50 for contract year two, resulting in a new not-to-exceed total Contract amount of $107,539.50; and

WHEREAS, on July 12, 2021, the Parties entered into Amendment No. 3 to the Contract. Because of a geographical redistribution by the Bureau of Labor Statistics which changed the Consumer Price Index (CPI) Series ID: CUURA422SAO Not Seasonally Adjusted San Francisco-Oakland-San Jose, upon which the annual CPI increase is based (see page 18 of the Contract, Section "PRICE ADJUSTMENTS") to Series ID: CUURS49BSAO Not Seasonally Adjusted San Francisco-Oakland-Hayward, the Parties agreed to update the Contract Terms and Conditions PRICE ADJUSTMENT clause to reflect the new Series ID

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

1. The annual amount of the contract is deleted in its entirety and replaced with the following: Contract Not-To-Exceed Amount $146,304.62.

2. Section B of the Contract is deleted in its entirety and replaced with the following:

WHEREAS, The term of this contract shall be from July 1, 2017 to June 30, The City reserves the right to review the Contractor's performance at any time and cancel all or part of the Contract.

3. The "Proposal Offer Form – Costs" is hereby amended to include the following:

Cost Per Cart (FY 2022 – 2023)	$3.88

4. All other provisions of the Agreement shall remain in full force and effect.

This Amendment is executed as of the date first written above.

[SIGNATURES ON THE FOLLOWING PAGE]

SIGNATURE PAGE
FOR AMENDMENT NO. 4 WITH ALICE WRIGHT
FOR ABANDONED SHOPPING CART RETRIEVAL SERVICES

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 4 as of the date first written above.

CITY OF MILPITAS

***Approved By*:**

_____
Steven G. McHarris, City Manager

_____
Date

Approved As To Form:

_____
Michael Mutalipassi, City Attorney

Approved:

_____
Lauren Lai, CPA, CPM
Finance Director/Risk manager

Approved As To Content:

_____
Sharon Goei, Building Safety & Housing Director

ALICE WRIGHT

_____
Signature of Authorized Representative

_____
Name of Authorized Representative

_____
Title of Authorized Representative

_____
Date

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Adopt a Resolution to Amend Resolution No. 1626 the City of Milpitas' Classification Plan to Approve and Adopt the Classification Specifications and Pay Schedules for the Legal Assistant, Assistant City Attorney, Deputy City Attorney and Deputy Director of Information Technology (Staff Contact: Jeannine Seher, Human Resources Director, 408-586-3086)**
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	6/21/2022
Recommendation:	Adopt a Resolution to Amend Resolution No. 1626 the City of Milpitas' Classification Plan to Approve and Adopt the Classification Specifications and Pay Schedules for the Legal Assistant, Assistant City Attorney, Deputy City Attorney and Deputy Director of Information Technology

Background:
On June 22, 2021, City Council reported out of closed session, its decision to transition to an in-house City Attorney model, and on August 5, 2021 formed a Subcommittee, comprised of Mayor Tran and Vice Mayor Montano to provide further direction on the recruitment process. On September 7, 2021, Council adopted the City Attorney class specification and salary schedule, and consistent with the Subcommittee's direction, authorized the recommended recruitment process. City Council took action on April 19, 2022 to appoint the City Attorney, who started on April 26, 2022. The City Attorney is charged with the responsibility of assessing the staffing needs to adequately staff the City Attorney's Office.

On June 7, 2022, the City Council adopted the proposed budget, authorizing the addition of one (1) FTE Legal Assistant and one (1) FTE Assistant City Attorney for the City Attorney's Office. In addition, the Council authorized one (1) FTE Information Technology Manager be deleted and authorized the addition of one (1) FTE Deputy Director of Information Technology.

Analysis:
Staff is requesting Council adopt a Resolution to Amend the City of Milpitas' Classification Plan to establish the classifications of Legal Assistant, Assistant City Attorney, Deputy City Attorney and Deputy Director of Information Technology.

City Attorney's Office
The City Attorney's budget assumed sufficient allocations to fund one (1) FTE Legal Assistant and (1) FTE Assistant City Attorney. The proposed action creates three classifications and establishes a salary scale for each, which includes a Legal Assistant, Assistant City Attorney and Deputy City Attorney. Although the City Attorney is not advocating for an additional position, the creation of the lower-level Deputy City Attorney classification is being created to afford the City Attorney with the maximum amount of flexibility in staffing his office. Given current market conditions, the candidate pool of interested and qualified attorney's ready to assume the role of Assistant City Attorney may be low. Therefore, the adoption of a Deputy City Attorney class will provide the City Attorney with an alternative should market conditions prove challenging in filling the higher-level position. Creating the Deputy City Attorney classification and establishing the salary provides a greater degree of flexibility should he be unable to find a candidate with the breadth and scope of experience ready to assume the duties of the Assistant City Attorney.

The proposed salary for the classification of Assistant City Attorney has been established with an internal relationship to the City Attorney classification. The proposed salary range is approximately twenty (20) percent lower than the City Attorney with a salary range of $160,000 – $216,586.

The proposed salary for the classification of Deputy City Attorney has been established with an internal relationship to the Assistant City Attorney. The proposed salary range is approximately twenty-two (22) percent lower than the Assistant City Attorney, with a proposed salary range of $125,000 - $173,268.

The proposed salary of the Legal Assistant has been established with an internal alignment to the classification of Administrative Assistant. Both classifications require a similar level of education and experience. The annual salary is set at $80,150-72-$97,423.38.

Information Technology Department

The proposed salary for the Deputy Director of Information Technology has been established utilizing an internal relationship with the IT Director and the IT Manager classifications. The proposed salary is set at $159,000 - $203,620, which is approximately 16% below the IT Director and 22% higher than the IT Manager classification.

Policy Alternative:

Alternative: Do not amend the classification salary schedule.

Pros: None, as City Council has authorized the funding for the stated positions.

Cons: Not moving forward with the recommended actions will result in the City Attorney not being successful in establishing his office and will be inconsistent with prior Council action. In addition, not moving forward with the recommended actions will delay the filling of a critical vacancy in the Information Technology Department.

Reason for not Recommending: If the City Council does not approve the amendment of the classification salary plan, the respective department heads will be struggle with achieving their objectives.

Fiscal Impact:

The annual compensation is included in the fiscal year 2022-23 budget.

California Environmental Quality Act:

Approval of the recommendation is not a project under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) (Common Sense Exemption) as it can be seen with certainty that a discussion about establishing a salary range will not have a significant effect on the environment. Further, the item is not a project pursuant to CEQA Guidelines Section 15378(b)(5) as it involves organizational or administrative activities of a local government entity that will not result in direct or indirect physical changes in the environment.

Recommendation:

Adopt a Resolution to Amend Resolution No. 1626 the City of Milpitas' Classification Plan to Approve and Adopt the Classification Specifications and Pay Schedules for the Legal Assistant, Assistant City Attorney, Deputy City Attorney and Deputy Director of Information Technology.

Attachments:

Classification Specification for Assistant City Attorney
Classification Specification for Deputy City Attorney
Classification Specification for Legal Assistant
Classification Specification for Deputy Director of Information Technology
Resolution Amending Resolution No. 1626, the Classification Plan

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING RESOLUTION NO. 1626, THE CLASSIFICATION PLAN, TO APPROVE AND ADOPT THE CLASSIFICATIONS PAY SCHEDULES

WHEREAS, the City of Milpitas has a Classification Plan adopted as Resolution No. 1626 on December 17, 1968, which has been amended from time to time, and is in accordance with the Personnel Rules and Regulations of the City of Milpitas (Resolution No. 792 as amended); and

WHEREAS, amendments to the Classification Plan are necessary to account for changes within the organization, transfer of duties, new job responsibilities, and adjustments to salary ranges; and

WHEREAS, the FY 2022/23 Adopted Budget included funding for staffing the City Attorney's Office and added one (1) full-time equivalent (FTE) Deputy Director of Information Technology (IT) and deleted one (1) FTE IT Manager; and,

WHEREAS, the City is required to publish publicly available approved and adopted pay schedule(s) for all positions within the Classification Plan pursuant to the California Code of Regulations,2 CCR §570.5.

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 limitedto 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 betrue and correct and are incorporated herein by reference.

2) Resolution No. 1626, as amended, is hereby further amended effective July 3, 2022, as set forth below.

A. APPROVE AND ADOPT THE CLASSIFICATION SPECIFICATIONS AND PAY SCHEDULES "NEW JOB CLASSIFICATIONS/SALARY TABLE EFFECTIVE JULY 3, 2022":

1. Legal Assistant, $80,150-72-$97,423.38.
2. Deputy City Attorney, $125,000 - $173,268
3. Assistant City Attorney, $160,000 – $216,586.
4. Deputy Director of Information Technology, $159,000 - $203,620

A pay schedule, that includes but is not limited to Classification (Position), Title, Payrate;Hourly, Bi-Weekly, Monthly and Annual Wage, is attached hereto as **Exhibit A** ("New Job Classifications/Salary Table effective 07-03-2022").

PASSED AND ADOPTED this_____day of_____, 2022, by the following vote:AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Wendy Wood, City Clerk

APPROVED:

_____
Rich Tran, Mayor

APPROVED AS TO FORM:

_____
Michael Mutalipassi, City Attorney

Deputy Director of Information Technology

City of Milpitas
Effective:
Revised:
EEOC:
FLSA:
Unit:
Physical:

DEFINITION

Plans, organizes, and directs the work of assigned programs in the Information Technology Department. Supervises and coordinates the work of staff engaged in operations related to assigned functional areas. Provides direct administrative and analytical support to the Director of Information Technology and assists in the overall management of the Department. Completes special projects as assigned.

DISTINGUISHING CHARACTERISTICS

The Deputy Director of Information Technology is a single position management classification within the Department of Information Technology with broad administration responsibility. It is distinguished from the Director of Information Technology in that the latter has overall responsibility for all operations, functions, sections, and divisions of the department. This is an unrepresented, at-will position and serves at the discretion of the Appointing Authority.

SUPERVISION RECEIVED AND EXERCISED

Receives general direction from the Director of Information Technology.

Exercises direct and indirect supervision over professional, technical, and clerical staff. The Deputy Director may be assigned the responsibility to oversee the operations of one or more of the divisions in the Department. The incumbent may be assigned to act in the absence of the department director.

EXAMPLES OF DUTIES – This class specification represents the core area of responsibilities; specific position assignments will vary depending on the needs of the department:

- Exercises management authority for assigned services and activities in the Information Technology Department such as:

  - developing and/or providing input into the department's budget;
  - monitoring goals and objectives of assigned units and taking corrective actions as appropriate.
  - recommending allocations of division funds within guidelines;
- Supervises managerial, technical, clerical, and lead staff to include prioritizing and assigning work; conducting performance evaluations; ensuring staff is trained; and making hiring, termination, and disciplinary recommendations.
- Identifies new and emerging technologies for use in City government; determines appropriate times for pilot projects and directs implantation as necessary to test concepts, sets or modifies standards and architectures, and establishes plans for future implementation.
- Develops and implements operational plans to provide application services, hardware systems, and resource requirements; implements operational plans to provide information technology infrastructure services to support the City's/department's business goals.
- Develops and manages strategic vendor and partnership relationships; ensures service provider performance is reviewed and that contract managers are notified when necessary; negotiates contracts with vendors, and authorizes procurement.
- Prepares and presents Agenda Reports for City Council;
- Explains and interprets Information Technology Department programs, policies, and activities.
- Manages, trains, and evaluates IT staff and develops processes designed to support a continuous learning environment;
- Supports the implementation of the departments and/or Citywide goals, objectives, policies, and procedures; analyzes and recommends strategies to improve the effectiveness of operational studies; recommends modifications to the IT Department activities with those of other departments, divisions, and outside agencies and organizations;
- Represents the IT Department in interdepartmental, outside agency, and public meetings;
- Participates and attends a variety of professional group meetings, committees, and task-forces; stays abreast of new trends, innovations, and best practices in the field of information technology;
- Develops and implements strategic short term and long-range division planning;
- May act as the Director of Information Technology in his/her absence; and
- Performs other duties of a similar nature or level as assigned.

QUALIFICATIONS

Knowledge of:

- Principles and practices of management, supervision, leadership, motivation, team building, organization, training, and conflict resolution.
- Management information systems methods and practices, distributed network design, telecommunications and their effective implementation; computer hardware and software development and installation; effective service delivery and the evaluation of computer services.
- Project management methodologies and techniques.

- Industry standards including ITIL, NIST, and ISO.
- Current and emerging technologies, technology directions, and strategic application to business needs.
- Laws, regulations and policies applicable to information technology.
- Principles and practices of business administration, including budgeting, cost analysis, fiscal management, and resource management.
- Practices and techniques of administrative and statistical analysis, statistical report preparation, and graphic presentation of analysis.
- Oral and written communication techniques to include presentations to groups of various sizes in a positive, inclusive, and motivational manner.
- Customer service techniques for interacting with internal and external customers and vendors.
- English composition spelling, grammar, vocabulary, and punctuation for both written and oral communications.

Ability to:

- Manage, supervise, evaluate, train, and develop staff and organize and manage their work.
- Conceptualize, launch and deliver multiple IT projects on time and within budget.
- Establish clear goals and objectives in order to create an organization that delivers excellent customer service through ethical leadership standards, and establishes an atmosphere of respect for employees consistent with the City's Code of Ethics and Values.
- Research laws, regulations, procedures, technical reference materials, and/or best practices; analyze, evaluate and interpret the data gathered; draw logical conclusions; develop reasonable and deliverable options, make appropriate recommendations; and implement the resultant change effectively.
- Build relationships; maintain and extend networks within, across, and external to organizational boundaries.
- Determine the appropriate course of action in stressful and/or emergency situations.
- Communicate information and ideas clearly and concisely, both orally and in writing.
- Work with and speak to various cultural and ethnic individuals and groups in a reasonable and effective manner.
- Establish and maintain effective working relationships with those contacted in the performance of required duties.
- Represent the department in meetings with representatives from various City and non-City organizations, with local businesses, vendors, internal and external customers, and/or with the general public.
- Prepare a variety of written communications to include reports, policies and procedures.
- Maintain accurate records and document actions taken.
- Maintain confidentiality of information.
- Gather and analyze statistical data and prepare comprehensive statistical reports.
- Work effectively as a member of the department's management team.
- Stay current with developments and changes in new technologies, platforms, and industry standards.

EDUCATION AND EXPERIENCE

Education: Graduation from an accredited college or university with a Bachelor's degree or higher in Computer Science, Information Systems, Business Administration, Public Administration, Mathematics, or a closely related field.

Experience: A minimum of six (6) years of experience in the field of technology with three (3) of those years in a managerial assignment overseeing complex information systems and business processes; experience must demonstrate familiarity with current and future applications of information technology, and trends in the field of information technology.

LICENSE OR CERTIFICATE

Incumbents must be able to travel independently to various locations within and outside the City of Milpitas to fulfill job responsibilities. When driving on City business, possession and maintenance of a valid California Driver's License is required.

SPECIAL REQUIREMENTS:

Essential duties require the following physical abilities and work environment.
Work is performed primarily in an office setting. Positions in this class typically require stooping, kneeling, reaching, standing, walking, fingering, grasping, feeling (e.g. a sense of touch), and repetitive motion. Work may be performed at irregular work hours, including days, nights, weekends and holidays.

Approved by:

_____ _____
City Manager Date

_____ _____
Human Resources Director Date

In compliance with the Americans with Disabilities Act, the City of Milpitas will provide reasonable accommodation to qualified individuals with disabilities and encourages both prospective and current employees to discuss potential accommodations with the Human Resources Department.

The City of Milpitas is an Equal Opportunity Employer.

City of Milpitas
Effective:
Revised:
EEOC: Admin
FLSA: Exempt
Unit: Unrepresented

ASSISTANT CITY ATTORNEY

DEFINITION

Under general direction, assists in administering all phases of City legal work; performs difficult and complex professional legal work including representation of the City in litigation; conducting research and providing legal advice and opinions to the City Council, Commissions, City Staff and City committees; acts for the City Attorney as assigned or during their absence.

DISTINGUISHING CHARATERISTICS

This is a single position class which is distinguished from the next lower class of Deputy City Attorney by the level of difficulty and complexity of work. An incumbent in this class is expected to frequently use a high degree of independent judgment and is expected to be capable of performing the full range of duties common to the position of City Attorney. These are performed as necessary and include work in an assisting capacity or full scope in the absence of the City Attorney. The incumbent handles cases as assigned or as dictated by the general policies of the City Attorney.

SUPERVISION RECEIVED AND EXERCISED

- Receives supervision from the City Attorney
- May provide supervision to lower level professional, paraprofessional, and clerical staff.

EXAMPLES OF DUTIES - Duties may include, but are not limited to, the following:

- Represents the City and its officers and employees in litigation as necessary, including preparation of pleadings, briefs, motions and other documents; appears before federal and state courts and administrative agencies.
- Drafts, analyzes, reviews and/or approves complex and routine ordinances, amendments to ordinances, resolutions, contracts, deeds, leases, development agreements, owner participation agreements, Memorandum of Understanding (MOU) and other legal documents and instruments.
- Performs legal research and prepares complex and routine opinions considering the actions, powers, duties, functions and obligations of the City Council, City Officials, City departments and various agencies, boards and commissions.
- Acts as senior counsel in handling serious, controversial and complex legal matters.
- Advises on personnel and employee relations matters; advises staff and elected officials on FPPC, government code 1090 and other conflict of interest questions.

- Confers with and renders assistance to department heads in establishing policies by applying legal points and procedures; recommends changes in establishing departmental policies by applying legal points and procedures; recommends changes in policies and procedures to meet legal requirements.
- Assists in or prepares cases for administrative and judicial hearings and represents the City in such hearings.
- Represents the City Attorney at various City Council, board and commissions meetings and in court as assigned.
- Assists with interaction with outside counsel and other legal consultants.
- Responds to citizen complaints and requests for information.
- Provides supervision to subordinate staff, as assigned.
- May assist with the preparation of the department budget.
- Perform related duties as assigned.

QUALIFICATIONS

Knowledge of:

- Civil, administrative, and criminal procedure.
- Local government law which may include, but is not limited to, Public Records Act, Brown Act, conflicts of interest, public contracts, employment practices, land use & development, housing, CEQA, eminent domain, real estate, telecommunications, policies & procedures.
- Pleading and practices and effective techniques in the presentation of court cases.
- Judicial procedures and rules of evidence.
- Responsibilities and obligations of public officials and administrative agencies.
- Principles and practices of government and government programs, including standards/best practices.
- Municipal government organization, structure and functional responsibilities.
- Supervisory principles and methods, including program development and implementation and work assignment, and employee selection, training, work evaluation, and discipline.

Ability to:

- Perform complex legal research, analyze complex problems, evaluate alternatives and make sound recommendations.
- Apply legal principles to determinations on individual cases, projects, and problems.
- Investigate and analyze legal issues and proactively develop creative solutions that contemplate practical implications.
- Perform legal research and analysis.
- Write quality legal documents and memoranda.
- Communicate in a manner that is organized, clear, concise, thorough, accurate, persuasive, and with appropriate tone.
- Negotiate settlements and contracts.
- Exercise independent judgment, making decisions when appropriate and seeking guidance/direction when necessary.
- Maintain confidential information and to exercise discretion.
- Use a computer and related software applications.

- Establish, maintain, and foster positive and effective working relationships with those contacted in the course of work.
- Plan, organize, supervise, review, and evaluate varied legal activities and functions.
- Train, motivate, and evaluate assigned staff.
- Assist in developing and implementing goals, objectives, policies, and procedures and work standards.
- Exercise independent judgment within general policy guidelines and legal parameters.
- Establish and maintain effective working relationships with those contacted in the course of the work.
- Represent the City effectively in meeting with others.
- Prepare clear, concise, and competent reports, correspondence and other written materials.

EDUCATION AND EXPERIENCE

Experience: Minimum of five years of responsible professional legal experience, which includes experience in municipal law.

Education**:** Juris Doctorate degree from an accredited law school.

LICENSE OR CERTIFICATE

- Active membership in the State Bar of California
- Possession and maintenance of a valid California Driver's License is required.

SPECIAL REQUIREMENTS:

Essential duties require the following physical abilities and work environment.

- Ability to work in a standard office environment
- Ability to attend night (evening) meetings
- Ability to travel independently to various locations within and outside of the City of Milpitas.

Approved by:

_____ _____

City Manager Date

_____ _____

Human Resources Director Date

In compliance with the Americans with Disabilities Act, the City of Milpitas will provide reasonable accommodation to qualified individuals with disabilities and encourages both prospective and current employees to discuss potential accommodations with the Human Resources Department.

The City of Milpitas is an Equal Opportunity Employer.

DEPUTY CITY ATTORNEY

City of Milpitas
Effective:
Revised:
EEOC: Admin
FLSA: Exempt
Unit: Unrepresented
Physical: 1

DEFINITION

Under general direction, performs difficult and responsible civil, criminal, transactional, and administrative legal work and provides legal counsel to City staff, agencies, boards and commissions; performs other related legal work as assigned.

DISTINGUISHING CHARATERISTICS

This is a journey level classification that includes litigation, contract negotiating and drafting, researching issues of municipal law, and providing advice to all City departments. Incumbents in this classification work on a variety of legal issues and performs related work as required.

This class is distinguished from the Assistant City Attorney by the level of difficulty and complexity of the work. The incumbent handles cases as assigned or as directed by the general policies of the City Attorney.

SUPERVISION RECEIVED AND EXERCISED

- Receives general direction from the City Attorney or designee
- No supervision exercised. May provide lead work over lower level professional, paraprofessional, and support staff.

EXAMPLE OF DUTIES – This class specification represents the core area of responsibilities; specific position assignments will vary depending on the needs of the department.

- Perform legal research and prepare opinions on various legal problems for City departments, the City Council, and various boards and commissions.
- Represents the City and its officers and employees in litigation as necessary, including the preparation of pleadings, briefs, motions, and other documents; appears before federal and state courts and administrative agencies.
- Prepare and draft ordinances, revisions of ordinances, resolutions, contracts, deeds, leases and other legal documents and instruments; review such documents and offer opinions as to legal acceptability when presented to the City for consideration by an outside agency.
- Confers with and renders assistance to department heads in establishing departmental policies by applying legal points and procedures; recommends changes in policies and procedures to meet legal requirements.
- Investigates claims and complaints against the City and may take or recommend appropriate action.

- May attend meetings of City Council, Council Committees, Commissions, Boards, and Committees to advise on legal matters.
- Represents the City Attorney at various board and commission meetings and in court as assigned.
- May assist with planning and organizing activities of the City Attorney's Office.
- Represent the City in civil actions brought by or against the City.
- Investigate claims and complaints by or against the City and recommend action to be taken.
- Other duties of a similar nature and level as assigned.

QUALIFICATIONS

Knowledge of:

- Civil, criminal, and administrative procedure.
- Local government law which may include, but is not limited to, Public Records Act, Brown Act, conflicts of interest, public contracts, employment practices, land use, eminent domain, policies & procedures.
- Pleading and practices and effective techniques in the presentation of court cases.
- Local rules of court and rules of evidence.
- Responsibilities and obligations of public officials and administrative agencies
- Principles, methods and techniques of legal research and investigation.
- Responsibilities and obligations of public officials and administrative agencies.
- Municipal government organization, structure and functional responsibilities.

Ability to:

- Define issues, perform legal research, analyze problems, evaluate alternatives and make sound recommendations.
- Apply legal principles to determinations on individual cases, projects, and problems.
- Investigate and analyze legal issues and proactively develop creative solutions that contemplate practical implications.
- Present statements of fact, law and argument clearly and logically.
- Exercise sound, independent judgment within general policy guidelines and legal parameters.
- Interpret state and federal laws and constitutional provisions affecting municipal operations and conduct legal research as necessary to ascertain relevant law.
- Establish and maintain effective working relationships.
- Use a computer and related software applications.
- Represent the City effectively in hearings, courts of law and meetings with others.
- Prepare clear, concise and competent resolutions, ordinances, contracts, leases, permits, reports, correspondence and other written materials.

EDUCATION AND EXPERIENCE

- Two years of responsible professional legal experience including experience in municipal law; **AND,**
- Juris Doctorate degree from an accredited law school.

LICENSE OR CERTIFICATE

- Active membership in the State Bar of California.
- Possession and maintenance of a valid California Driver's License is required.

SPECIAL REQUIREMENTS

Essential duties require the following physical abilities and work environment

- Ability to work in a standard office environment
- Ability to attend night (evening) meetings
- Ability to travel independently to various locations within and outside the City of Milpitas

Approved by:

_____ _____

City Manager Date

_____ _____

Human Resources Director Date

In compliance with the Americans with Disabilities Act, the City of Milpitas will provide reasonable accommodation to qualified individuals with disabilities and encourages both prospective and current employees to discuss potential accommodations with the Human Resources Department.

The City of Milpitas is an Equal Opportunity Employer.

LEGAL ASSISTANT

City of Milpitas
Effective:
EEOC: Admin
FLSA: Non-exempt
UNIT: Unrepresented
Physical: 1

DEFINITION

Under general supervision, performs difficult and responsible legal secretarial and administrative work involved in the conduct of the City Attorney's office. The Legal Assistant performs a variety of legal administrative assistant duties within the Office of the City Attorney; keeps complex legal files and calendars; drafts, proofreads, and reviews legal materials to ensure conformance to standard legal and office style and accuracy, including accuracy of citations and code references; identifies applicable procedural rules and statutes; performs work related to a variety of legal matters; serves as a contact person in answering inquiries and complaints, providing information related to the Office of the City Attorney. Performs related work as required.

DISTINGUISHING CHARACTERISTICS

This is a single position class with specialized legal administrative responsibility in a law office. The Legal Assistant is distinguished from other classes in the administrative support series in that the incumbent provides responsible, confidential, administrative support services for the City Attorney. This classification provides office management and performs a variety of complex legal assistant assignments within broad procedural guidelines with minimal supervision and instruction and requires specialized knowledge of office management-related policies, procedures, and practices as well as applicable federal and state laws and regulations. The classification involves working with individuals, activities, and issues with which the City Attorney is involved and requires daily contact with a cross-section of high-level government, community, and public and private officials, as well as individual members of the community. The incumbent must be able to handle non-partisan confidential matters with a high level of judgment.

As a member of the City's unclassified service, this is an "at-will" position and the incumbent serves at the discretion of the City Attorney. An incumbent in this position demonstrates strong ethical, professional, and service-oriented leadership and interpersonal skills.

SUPERVISION RECEIVED AND EXERCISED

- Supervision is provided by the City Attorney
- No supervision is exercised

EXAMPLES OF DUTIES - Duties may include, but are not limited to, the following:

- Organizes and prepares complex legal files and calendars. Understands and independently calendars deadlines related to documents being filed, including both internal and statutory deadlines.

- Prepares, assembles, proofreads, and files a variety of documents, such as ordinances, resolutions, contracts, agreements, deeds, easements, complaints, pleadings, and other legal documents from copy, draft, dictation, or verbal or written instructions; proofreads ordinances, resolutions, briefs, real estate descriptions, and other materials for accuracy, completeness, and compliance with established standards; serves legal documents; prepares a semi-annual (or as needed) litigation report.

- Prepares and files legal documents and pleadings for litigation and administrative hearing matters, including proposed interrogatories and replies to interrogatories.

- Drafts legal papers relating to civil and criminal proceedings such as routine complaints, dismissals, releases, and other legal documents; prepares routine contracts, deeds of trust, and leases.

- Researches legal information and records from readily available sources and compiles information from a variety of sources; coordinates the gathering of information from various departments in the preparation of contracts and other legal documents; reviews certain legal documents to ensure necessary provisions are contained.

- Reads and routes incoming mail, including receipt of legal pleadings; independently composes standard responses to legal documents and correspondence on own initiative or from instructions.

- Organizes and maintains files for all legal documents, office records, and legal materials; retrieves records; calendars deadlines related to incoming legal documents; purges files as required

- Compiles and organizes agenda materials from files and other sources for City Attorney's use in providing legal assistance and in preparation of other legal documents and opinions.

- Receives and screens visitors and callers; refers them to the proper person as required; provides information to the public and to employees that require judgment and a good knowledge and interpretation of legal matters handled by the City Attorney's office. Schedules appointments; responds to public inquiries, both on the telephone, through email or written correspondence, and in-person, and refers to proper staff members for more specific information as appropriate.

- Transcribes recordings and word processes a variety of correspondence, memoranda, reports and documents from prior documents, rough copy or brief instructions; utilizes standard word processing, spreadsheet, and database applications; prepares agendas and may attend and take minutes of meetings of citizen, advisory, and administrative groups.

- Maintains multiple calendars; arranges meetings, appointments, and conferences; coordinates and makes travel arrangements.

- Provides administrative support to the City Attorney's Office and maintains records of accounts payable for purchases and expenditures and serves as liaison to the Finance Department regarding department invoices; collects prepares and assembles all materials for City Attorney's budget.

- Assists in the audit and redaction of documents to be produced in response to a California Public Records Act or Discovery Request.

- Maintains general and confidential files and distributes correspondence and legal documents as appropriate; contacts department directors, members of the Council, public agencies and members of the public to obtain or transmit information for the City Attorney.

- Is familiar with and adheres to court rules, and required timeframes related to preparing and filing legal documents.

- Maintains strict confidentially of sensitive attorney-client and litigation information.

- Serves as backup to other administrative staff.

- Attends meetings and reports on the outcome(s).

- Assists with Public Records Act requests and other inquiries from the public.

- Performs special projects and related duties as assigned.

- May direct work of clerical assistants, interns or volunteers. May provide lead direction to support staff.

- Perform related duties as assigned.

MINIMUM QUALIFICATIONS

Knowledge of:

- Microsoft Office suite products, including but not limited to Word, Excel, PowerPoint and Outlook
- Basic organization and function of municipal government, including the role of an elected City Council and appointed boards and commissions; functions and role of City Manager, City Attorney, and City operations;
- Correct English usage, spelling, punctuation, grammar and vocabulary;
- Current legal and general office methods and technology
- Legal terminology, pleadings, briefs, ordinances, resolutions, documents, and publications.
- Legal principles and practices, forms, and procedures required for a legal office work, procedures and documents
- Legal calendaring principles;
- Municipal or governmental functions and practices
- Federal, state and local court rules or how to access them.
- Office methods, procedures and machines, including filing systems, reception and telephone techniques and letter and report writing;
- Office safety practices, procedures and standards;

Ability to:

- Perform difficult para-professional work independently
- Effectively communicate orally and in writing;
- Effectively represent the City with governmental agencies, businesses and professional organizations and litigants
- Provide a high level of customer service to the public and City staff, in person and over the telephone
- Effectively manage calendars and appointment schedules
- Establish and maintain effective working relationships including with the general public
- Prepare correspondence without review, employ good judgment and make sound decisions within established policies and procedures;
- Use tact, discretion, and mature judgment in the handling of sensitive and confidential information
- Maintain records and prepare accurate and timely reports from statistical or legal information
- Type 45 words per minute on a computer keyboard
- Interpret, apply, and explain departmental policies and procedures
- Research and compile a variety of legal matters and informational materials
- Work independently under pressure, organize and prioritize work assignments with little or no supervision to simultaneously complete several projects

EXPERIENCE AND EDUCATION

Education: Completion of High School or equivalent; and,

Experience: Three years of legal assistant work including one year of preparing and formatting complex legal documents such as pleadings, briefs, contracts, ordinances, resolutions, and other legal transactional documents. Experience with a municipality or public agency and an understanding of simple legal documents and Court procedures are desirable, but not required.

OR

Education: An Associate's Degree from an accredited college in legal secretarial studies or related field; and,

Experience: One year of legal assistant work preparing and formatting complex legal documents, such as pleadings, briefs, contracts, ordinances, resolutions, and other legal transaction documents. Experience with a municipality or public agency and an understanding of simple legal documents and Court procedures are desirable, but not required.

LICENSE AND CERTIFICATE

Possession of or ability to obtain and maintain an appropriate, valid California Driver's License.

SPECIAL REQUIREMENTS:

Essential duties require the following physical abilities and work environment.
Ability to work in a standard office environment, ability to attend night (evening) meetings, and ability to travel to various locations within and outside the City of Milpitas.

PHYSICAL REQUIREMENTS:

- Mobility and Dexterity: Positions in this class typically require stooping, kneeling, reaching, occasional standing, occasional walking, pushing, pulling, fingering, grasping, feeling (i.e. sense of touch), and repetitive motion.
- Lifting, Carrying, Pushing and Pulling -- Sedentary Work: Employees in this class exert up to 10 pounds of force occasionally and/or a negligible amount of force frequently or constantly to lift, carry, push, pull or otherwise move objects.
- Vision: Positions in this class require the employee to have close visual acuity, with or without correction, to prepare and analyze data and figures, transcribe, view a computer screen, read, etc. Positions in this class also require employees to have depth perception in order to operate a motor vehicle.
- Hearing/Talking: Positions in this class require the employee to perceive the nature of sounds at normal speaking levels with or without correction, and have the ability to receive detailed information through oral communication. Positions in this class require the employee to express or exchange ideas by means of the spoken word.

WORKING CONDITIONS:

- Office Work: Employees in this class will most often be working in an office setting.

Approved by:

_____ _____

City Manager Date

_____ _____

Human Resources Director Date

In compliance with the Americans with Disabilities Act, the City of Milpitas will provide reasonable accommodation to qualified individuals with disabilities and encourages both prospective and current employees to discuss potential accommodations with the Human Resources Department.

The City of Milpitas is an Equal Opportunity Employer.

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Adopt a Resolution Approving Rental Rates for Public Spaces in City Hall (Staff Contact: Renee Lorentzen, Director of Recreation and Community Services, 408-586-3409)**
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	6/21/2022
	Recommendation: Adopt a resolution approving rental rates to be added to the Master Fee Schedule for the City Hall Rotunda and the City Hall City Council Chambers.

BACKGROUND:

At the June 7, 2022 City Council meeting, through Announcements, Mayor Tran requested and the City Council concurred by consensus, that staff work with the Boy Scouts on renting the City Council Chamber and submit a related fee waiver for use of the Chamber to the City Council for consideration. As part of responding to this request, it was discovered that rental rates for areas in and around City were no longer listed in the FY 2022-23 Master Fee Schedule, approved by Council on May 3, 2022. The last reference of the room rental rates was in the Master Fee Schedule in 2018. However, rules for renting the rotunda and Council Chambers are incorporated in the City's Facility Use Rules and Regulations approved by City Council in 2016.

The City's master fee schedule identifies fees for services and activities provided at the request of, or on behalf of, a single party as opposed to the public at large, including fees like program participation fees, facility rental fees, and administration fees.

ANALYSIS:

In an effort to update the Master Fee Schedule for Fiscal Year 2022-23, staff recommends adding the City Hall Rental Fees, which were inadvertently omitted from a prior schedule, and correcting a clerical error for the Recreation Transaction Fee.

City Hall Rental Fees

Staff is proposing to reinstate rental rates for the Veterans Plaza, Rotunda and City Council Chambers similar to the hourly rates charged in 2018. As part of the development of the FY 2023-24 Master Fee Scheduled, the rental rates will be aligned to the Council approved Recreation and Community Services Cost Recovery Policy.

City Hall Rotunda

Fee Description	Milpitas Schools, Chamber, Gov. Agencies	Resident Non-Profits	Milpitas Residents	Non-Residents
Application Fee	$30	$30	$30	$30
Deposit (refundable)	No Fee	$500	$500	$500
Hourly Rental Rate (2hr min)	No Fee	$40	$80	$160
Staff/hour (Maintenance and/or IT)	$50 per staff	$50 per staff	$50 per staff	$50 per staff

City Hall City Council Chambers

Fee Description	Milpitas Schools, Chamber, Gov. Agencies	Resident Non-Profits	Milpitas Residents	Non-Residents
Application Fee	$30	$30	$30	$30
Deposit (refundable)	No Fee	$500	$500	$500
Hourly Rental Rate (2hr min)	No Fee	$78	$260	$520
Staff/hour (Maintenance and/or IT)	$50 per staff	$50 per staff	$50 per staff	$50 per staff

City Hall Veterans Plaza

	Milpitas Schools, Chamber, Gov. Agencies	Resident Non-Profits	Milpitas Residents	Non-Residents
Application Fee	$30	$30	$30	$30
Deposit (refundable)	No Fee	$500	$500	$500
Hourly Rental Rate (2hr min)	No Fee	$40	80	$160
Staff/hour (Maintenance and/or IT)	$50 per staff	$50 per staff	$50 per staff	$50 per staff

Recreation Transaction Fee
Staff recommends correcting a clerical error of this existing fee. The Recreation Transaction Fee offsets the City's vendor related cost associated with transaction processing for all in-person transactions. The current range listed for this fee is $1- $3 per receipt. The range should be listed as $1- $5 per receipt.

POLICY ALTERNATIVE(S):

Alternative 1: Do not amend the FY 2022-23 Master Fee Schedule.

Pros: None.
Cons: City's General Fund would have to partially or fully absorb costs for renting facilities at City Hall to the public and the recreation transaction fees.
Reason not recommended: Not amending the FY 2022-23 Master Fee Schedule as recommended is contrary to previous Council direction including adopted fiscal policies and the Recreation and Community Services Cost Recovery Policy.

FISCAL IMPACT:
Consistent with Recreation and Community Services Cost Recovery Policy, the recommended changes to the FY 2022-23 Master Fee Schedule, will fully or partially recover the City's cost for the rental of City facilities and recreation transaction fees.

California Environmental Quality Act (CEQA):
The fees (charges) authorized by this Resolution are statutorily exempt from environmental review under Guideline 15273 of the California Environmental Quality Act (CEQA), which provides an exemption for the establishment or modification of charges by public agencies, which the public agency finds are for the purpose of meeting operating expenses.

RECOMMENDATION:
Adopt a resolution approving rental rates to be added to the Master Fee Schedule for the City Hall Rotunda and the City Hall City Council Chambers.

Attachment(s):
1. Draft Resolution

RESOLUTION NO. _____
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING NEW FEES TO THE MASTER FEE SCHEDULE 2022-23

WHEREAS, the City of Milpitas (the "City") charges fees for licenses, permits, and various services provided by the City (collectively, the "Fees"); and

WHEREAS, the Fees are established to offset all, or portions of, the costs of providing the various services for which the Fees are collected; and

WHEREAS, on April 19, 2022, the City Council adopted Resolution Nr. 9142 approving the Fiscal Year 2022-23 Master Fee Schedule; and

WHEREAS, the City desires to accommodate requests from entities and individuals to rent the City Hall Rotunda, the City Hall Council Chambers, and the City Hall Veterans Plaza ; and

WHEREAS, the Fiscal Year 2022-23 Master Fee Schedule inadvertently includes the incorrect amount for the Recreation Transaction Fee due to a clerical error; and

WHEREAS, with the exception of those fees for services or facilities specifically listed in this Resolution, the City Council does not wish to repeal or amend fees set by previous resolution.

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 following City Hall room rental rates are approved:

City Hall Rotunda

	Milpitas Schools, Chamber, Gov. Agencies	Resident Non-Profits	Milpitas Residents	Non-Residents
Application Fee	$30	$30	$30	$30
Deposit (refundable)	No Fee	$500	$500	$500
Hourly Rental Rate (2hr min)	No Fee	$40	$80	$160
Staff/hour (Maintenance and/or IT)	$50 per staff	$50 per staff	$50 per staff	$50 per staff

City Hall City Council Chambers

	Milpitas Schools, Chamber, Gov. Agencies	Resident Non-Profits	Milpitas Residents	Non-Residents
Application Fee	$30	$30	$30	$30
Deposit (refundable)	No Fee	$500	$500	$500

Hourly Rental Rate (2hr min)	No Fee	$78	$260	$520
Staff/hour (Maintenance and/or IT)	$50 per staff	$50 per staff	$50 per staff	$50 per staff

City Hall Veterans Plaza

	Milpitas Schools, Chamber, Gov. Agencies	Resident Non-Profits	Milpitas Residents	Non-Residents
Application Fee	$30	$30	$30	$30
Deposit (refundable)	No Fee	$500	$500	$500
Hourly Rental Rate (2hr min)	No Fee	$40	$80	$160
Staff/hour (Maintenance and/or IT)	$50 per staff	$50 per staff	$50 per staff	$50 per staff

3. The following Recreation Transaction Fee is approved:
   $1 – 5$ per transaction receipt.

4. Staff is authorized to incorporate the aforementioned rental rates into the City of Milpitas Facility Manual, Indoor and Outdoor Facilities, and other documents of the City, as appropriate.

5. The fees and use charges shall go into effect immediately.

PASSED AND ADOPTED this _____ day of _____, by the following vote:
AYES:
NOES:
ABSENT:
ABSTAIN:
ATTEST:

APPROVED:

_____ _____

Wendy Wood, City Clerk Mayor Rich Tran

APPROVED AS TO FORM:

_____

Michael Mutalipassi, City Attorney

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Approve and Authorize the City Manager to Execute Amendment No. 2 with Avolve Software for the Maintenance Contract Extension for ProjectDox (Staff Contact: Daniel Nam, IT Director, 408-586-2712; and Chris Schroeder, Purchasing Agent, 408-586-3161)**
Category:	Leadership and Support Services
Meeting Date:	6/21/2022
	Recommendation: Approve and Authorize the City Manager to Execute Amendment No. 2 with Avolve Software to extend the maintenance agreement for one (1) additional year and increase the existing contract amount of $369,731.07 by $29,906.55 for a total contract amount of $399,237.62

BACKGROUND:

In 2017, the Council approved the purchase of Avolve ProjectDox software to help transition the City's traditional paper-based plan review process to advanced web-based electronic plan review system. ProjectDox allows staff to digitally review plans and significantly reduce process time which benefits both staff and customers. This software solution allows developers to electronically submit and monitor development projects as they go through the city's review for building, zoning, and planning compliance. The system also allows city departments and other agencies to review projects simultaneously. This helps resolving conflicting reviewer commentary and reduce review time, all the while ensuring an efficient and transparent review process.

Electronic plan submittal using ProjectDox reduced the traditional plan processing time by 20 to 50 percent by reducing or eliminating the number of physical trips to and from City Hall and by making these services available 24/7.

ANALYSIS:

The City entered into the initial agreement with the contractor which included the purchase of the software and maintenance support from June 28, 2017, through June 28, 2018, with four (4) one-year options to extend the contract for a total amount of $334,656.20.

Initial: June 28, 2017 – June 27, 2018	$216,630.00
Option 1: June 28, 2018 – June 27, 2019	$29,506.55
Option 2: June 28, 2019 – June 27, 2020	$29,506.55
Option 3: June 28, 2020 – June 27, 2021	$29,506.55
Option 4: June 28, 2021 – June 27, 2022	$29,506.55
Contract Total	$334,656.20
Amendment No. 1 – April 2, 2019	$35,074.87
Amendment No. 2 – June 2022	**$29,506.55**
Amendment Total	$64,581.42
Contract Total	**$399,237.62**

Staff recommends amending the contract to add an additional year for the period from June 28, 2022 through June 27, 2023 for the maximum compensation of $29,506.55, bringing the total contract amount to $399,237.62.

POLICY ALTERNATIVE(S):

Alternative 1: Not approve the contract extension
Pros: None
Cons: City will lose the critical support services for the electronic plan review system.
Reason for Not Recommending: The City's electronic plan review system is complex and is integrated with other enterprise systems. Without the maintenance agreement extension, the City will lose the technical support from the vendor, and will not be able to upgrade the system to implement additional features and security updates.

FISCAL IMPACT:
CIP 3434: Permitting Technology Improvement fund is set aside to fund any improvements needed to the permitting automation system. The maintenance agreement can be funded from the remaining balance of $314,925, as of 06/16/2022. Funding source for CP3434 comes from the Permit Automation Fund.

California Environmental Quality Act (CEQA):
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. 2 with Avolve Software to extend the maintenance agreement for one (1) additional year and increase the existing contract amount of $369,731.07 by $29,906.55 for a total contract amount of $399,237.62

Attachment(s):
1. Amendment No. 2
2. Exhibit A - Quotation

AMENDMENT NO. 2 TO THE AGREEMENT WITH AVOLVE SOFTWARE CORPORATION FOR PROJECTDOX ELECTRONIC PLAN CHECK SOFTWARE

This Amendment is entered into as of April 2, 2019, (Effective Date) by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "City") and **Avolve Software Corporation**, a California corporation (hereafter referred to as "Contractor"). City and Contractor are sometimes individually referred to as “Party” and collectively as “Parties” in this Amendment No. 2.

RECITALS

WHEREAS, on June 20, 2017 the Milpitas City Council adopted resolution 8681, making cooperative purchase findings and authorizing the Purchasing Agent to enter into a cooperative purchasing agreement with Avolve Software Corporation for the purchase of Avolve ProjectDox software from Insight Public Sector; and

WHEREAS, on June 28, 2017, the City entered into a written agreement (hereinafter, the “Contract”) with Contractor through a U.S. Communities cooperative purchasing program, which provided for ProjectDox Software and ePlan Maintenance Services to be purchased for the term of June 28, 2017 through June 27, 2018, with four (4) one-year options to extend through June 22, 2022, for the amount of $334,656.20; and

WHEREAS, on June 27, 2018 the parties executed Option No. 1 to the Contract for a term of June 28, 2018 to June 27, 2019, and a maximum compensation of $29,506.55; and

WHEREAS, on April 2,2019 the parties executed Amendment No. 1 to the Contract to increase the Agreement amount by $35,074.87 to add a ProjectDox Test System and Assurance Services; and

WHEREAS, on June 27, 2019 the parties executed Option No. 2 to the Contract for a term of June 28, 2019 to June 27, 2020, and a maximum compensation of $29,506.55; and

WHEREAS, on April 10, 2020 the parties executed Option No. 3 to the Contract for a term of June 28, 2020 to June 27, 2021, and a maximum compensation of $29,506.55; and

WHEREAS, on June 20, 2021 the parties executed Option No. 4 to the Contract for a term of June 28, 2021 to June 27, 2022, and a maximum compensation of $29,506.00; and

WHEREAS, the parties now desire to amend the Contract to extend the contract to June 27, 2023 and a maximum compensation of $29,506.00;

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

1. The Agreement compensation amount is increased by $29,506.00 for the purchase of a ProjectDox Test System and Assurance Services as quoted by Avolve Software Corporation in the attached **EXHIBIT A**, thereby increasing the total value of the Agreement to a new not-to-exceed amount of $399,237.07.

2. All other provisions of the Agreement shall remain in full force and effect.

SIGNATURE PAGE FOR AMMENDMENT NO. 2 BETWEEN THE CITY OF MILPITAS AND AVOLVE SOFTWARE CORPORATION

APPROVED BY:

CITY OF MILPITAS

Approved By:

_____
Steven G. McHarris, City Manager

_____
Effective Date

Approved As To Form:

_____
Michael Mualipassi, City Attorney

Approved As To Scope:

_____
Lauren Lai, CPA, MPA
Finance Director / Risk Manager

Approved As To Content:

_____
Daniel Nam
Director of Information Technology

AVOLVE SOFTWARE CORPORATION

_____
Signature

_____
Name

_____
Title

_____
Date

EXHIBIT A

[AVOLVE QUOTATION ON FOLLOWING PAGE]

INSIGHT PUBLIC SECTOR SLED
2701 E INSIGHT WAY
CHANDLER AZ 85286-1930
Tel: 800-467-4448

SOLD-TO PARTY 10334506

CITY OF MILPITAS
455 E CALAVERAS BLVD
MILPITAS CA 95035-5411

SHIP-TO

CITY OF MILPITAS
455 E CALAVERAS BLVD
MILPITAS CA 95035-5411

Quotation

Quotation Number	:	225040314
Document Date	:	17-MAY-2022
PO Number	:	
PO Release	:	
Sales Rep	:	Chris Robertson
Email	:	CHRIS.ROBERTSON@INSIGHT.COM
Telephone	:	+14804096775

We deliver according to the following terms:

Payment Terms	:	Net 45 days
Ship Via	:	Electronic Delivery
Terms of Delivery:	:	FOB DESTINATION
Currency	:	USD

In order for Insight to accept Purchase Orders against this contract and honor the prices on this quote, your agency must be registered with OMNIA Partners Public Sector (formerly U.S. Communities).
Our sales teams would be happy to assist you with your registration. Please contact them for assistance -- the registration process takes less than five minutes.

Material	Material Description	Quantity	Unit Price	Extended Price
MAINT-OAS4	AVOLVE ONLINE APPLICATION SUBMISSION PORTAL MAINTENANCE TIER 4 - Coverage Dates: 28-JUN-2022 - 27-JUN-2023 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	6,927.00	6,927.00
MAINT-PDOX4	AVOLVE PROJECTDOX TIER 4 MAINTENANCE - Coverage Dates: 28-JUN-2022 - 27-JUN-2023 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	22,579.00	22,579.00

Product Subtotal	29,506.00
TAX	0.00
Total	29,506.00

Thank you for choosing Insight. Please contact us with any questions or for additional information about Insight's complete IT solution offering.

Sincerely,

Chris Robertson
+14804096775
CHRIS.ROBERTSON@INSIGHT.COM
Fax 4807608532

INSIGHT PUBLIC SECTOR SLED
2701 E INSIGHT WAY
CHANDLER AZ 85286-1930
Tel: 800-467-4448

SOLD-TO PARTY 10334506

CITY OF MILPITAS
455 E CALAVERAS BLVD
MILPITAS CA 95035-5411

SHIP-TO

CITY OF MILPITAS
455 E CALAVERAS BLVD
MILPITAS CA 95035-5411

Quotation

Quotation Number	:	225040314
Document Date	:	17-MAY-2022
PO Number	:	
PO Release	:	
Sales Rep	:	Chris Robertson
Email	:	CHRIS.ROBERTSON@INSIGHT.COM
Telephone	:	+14804096775

We deliver according to the following terms:

Payment Terms	:	Net 45 days
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Terms of Delivery:	:	FOB DESTINATION
Currency	:	USD

In order for Insight to accept Purchase Orders against this contract and honor the prices on this quote, your agency must be registered with OMNIA Partners Public Sector (formerly U.S. Communities).
Our sales teams would be happy to assist you with your registration. Please contact them for assistance -- the registration process takes less than five minutes.

Material	Material Description	Quantity	Unit Price	Extended Price
MAINT-OAS4	AVOLVE ONLINE APPLICATION SUBMISSION PORTAL MAINTENANCE TIER 4 - Coverage Dates: 28-JUN-2022 - 27-JUN-2023 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	6,927.00	6,927.00
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Product Subtotal	29,506.00
TAX	0.00
Total	29,506.00

Thank you for choosing Insight. Please contact us with any questions or for additional information about Insight's complete IT solution offering.

Sincerely,

Chris Robertson
+14804096775
CHRIS.ROBERTSON@INSIGHT.COM
Fax 4807608532

OMNIA Partners (formerly U.S. Communities) IT Products, Services and Solutions Contract No. 4400006644

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CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Approve the Donation and Fee Waiver/Reduction City Council Policy (Staff Contact: Renee Lorentzen, Director of Recreation and Community Services, 408-586-3409)**
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	6/21/2022
	Recommendation: Approve the Donation and Fee Waiver/Reduction City Council Policy

BACKGROUND:
On March 15, 2022, under Announcements, Councilmember Chua, with the consent of the Council, requested that staff bring forward an amendment to the City Council Donation and Fee Waiver/Reduction Policy (Policy). Specifically, Councilmember Chua requested that non-profit organizations with an address outside of the City of Milpitas be eligible to receive a donation or fee waiver for an event as long as the event is held within City limits and benefits primarily residents of the City of Milpitas.

ANALYSIS:
Attached, please find the amended City Council Donation and Fee Waiver/Reduction Policy for Council consideration. With this amended Policy, the requirement that organizations have to have an address within the City of Milpitas to be eligible for a donation and/or fee waiver/reduction has been removed.

Please note that the Policy is presented with the updated policy format and procedures. The responsibilities for the application process, eligibility determination and processing of donation and/or fee waiver/reduction requests have been centralized with the Recreation and Community Services Department. Previously, the responsibilities for the application process and processing of the request resided with the City Clerk's Office and the eligibility determination was handled by the Recreation and Community Services Department. Further, the updated Policy includes an appeal process to the City Manager, if the Recreation and Community Services Director (Director) determines that an applicant does not qualify for a donation or a fee waiver/reduction. A request for appeal must be made, in writing, and delivered to the City Manager's Office within seven (7) days of the applicant's receipt of the determination of ineligibility from the Director. The request for appeal must state, in writing, the basis for the appeal and must contain all written documentation supporting each basis for appeal. The City Manager shall issue a decision, in writing, without hearing based on the documents presented.

FISCAL IMPACT:
There is no fiscal impact with the approval of this policy because the City Council limits the funds for donations and fee waivers/reductions through the annual budget process. As part of the approval of the Fiscal Year 2022-23 Adopted Budget, the Council allocated $25,000 for this purpose.

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

RECOMMENDATION:
Approve the Donation and Fee Waiver/Reduction City Council Policy.

Attachment(s):
1. Donation and Fee Waiver/Reduction City Council Policy

CITY OF MILPITAS

Revision	Date
Original	04/16/2013
	6/21/2022

CITY COUNCIL POLICY

Policy No: Click or tap here to enter text.	**DONATION AND FEE WAIVER/ REDUCTION POLICY**	**Effective Date:** 6/21/2022
Revision No: 1	**Policy Administrator:** Recreation and Community Services	**Next Review Due:** As needed
Related Policies and Procedures: Click or tap here to enter text.	**Approved by:** Click or tap here to enter text. Council meeting date, agenda item #, and vote	**Date Approved:** 6/21/2022

1. PURPOSE

1.1. The City recognizes the value of partnership with other agencies and organizations in providing services that benefit the community and its residents.

1.2. The City may provide a donation or grant a reduction and/or waiver of fees to intergovernmental agencies or non-profit organizations that provide Milpitas community benefit.

2. POLICY

2.1. The City shall have the sole authority and the City Council shall have the final authority to approve Donations and Fee Waiver/Reduction requests.

2.2. The City Council shall evaluate donation and fee waiver/reduction requests at a scheduled City Council meeting.

2.3. Any requests for donation or fee waiver/reduction must be submitted in writing using the provided application form by the Recreation and Community Services Department.

2.4. In order for an organization to be eligible for a donation or fee waiver / reduction, the following criteria have to be met:

- 2.4.1. The applying organization must be:
  - 2.4.1.1 A non-profit organization as described by the Internal Revenue Section such as 501(c)(3) or an intergovernmental agency;
  - 2.4.1.2 Non-discriminatory, and non-political in nature;
- 2.4.2. Events must provide a community benefit within the City of Milpitas proper.

2.5. If the event requested for fee waiver is a fundraiser, the organization must demonstrate that at least 60% of fund raised will be of general benefit to the Milpitas community.

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

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

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

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

2.10. To the extent possible, the City's contribution should be recognized in the event fliers and/or advertising with the following statement, "This event made possible, in part, by the City of Milpitas."

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

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

3. PROCEDURE

3.1. The Recreation and Community Services Department shall maintain an application for Donation and Fee Waiver/Reduction Requests.

3.2. Upon receipt of an application, the Recreation and Community Services Department shall determine eligibility for a Donation and/or Fee Waiver/Reduction consistent with this Policy and inform the applicant of its determination in writing.

3.3. If eligibility is determined, the Director of Recreation and Community Services shall bring requests for donation or fee waiver/reductions to Council for approval at any regular or special meeting.

3.4. If ineligibility is determined, the applicant can appeal the Director of Recreation and Community Services' determination to the City Manager. A request for appeal must be made, in writing, and delivered to the City Manager's Office within seven (7) days of the applicant's receipt of the determination of ineligibility. The request for appeal must state, in writing, the basis for the appeal and must contain all written documentation supporting each basis for appeal. The City Manager shall issue a decision, in writing, without hearing based on the documents presented.

3.5. Donation and Fee Waiver Budget

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

DRAFT

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Conduct a Public Hearing and Adopt a Resolution Confirming the Assessment and Ordering the Levy for the Landscaping and Lighting Maintenance Assessment District No. 98-1, Sinclair Horizon for Fiscal Year 2022-23 (Staff Contact: Steve Erickson, Engineering Director/City Engineer, 408-586-3301)**
Category:	Public Hearings-Community Development
Meeting Date:	6/21/2022
	Recommendation: Open the public hearing, receive any comments, and move to close the hearing following any testimony, and adopt a resolution confirming the assessment and ordering the levy for Landscaping and Lighting Maintenance Assessment District No. 98-1, Sinclair Horizon for Fiscal Year 2022-23.

Background:
Landscaping and Lighting Maintenance Assessment District No. 98-1, Sinclair Horizon (LLMD 98-1) provides for the maintenance and improvement of public landscaping, irrigation systems, and pedestrian walking path adjacent to Sinclair Frontage Road, and Los Coches Creek abutting the Sinclair Horizon residential subdivision in the areas as shown on the attached location map attached.

Analysis:
On May 17, 2022, the City Council adopted Resolution No.9148 approving the Annual Engineer's Report and adopted Resolution No.9149 declaring its intention to levy and collect assessment for Fiscal Year 2022-23 for the Landscaping and Lighting Maintenance Assessment District No. 98-1.

An annual public hearing is necessary to adopt a resolution confirming the assessment and ordering the levy for the Landscape and Lighting Maintenance Assessment District 98-1 for Fiscal Year 2022-23 **(Attachment 1),** the Annual Engineer's Report **(Attachment 2)** to provide funds for the district. The total assessment for fiscal year 2022-23 is $493 per lot, with an assessment rate not exceeding the maximum rate per square foot. The FY 2022-23 rate is approximately (-0.44%) lower than the previous year FY 2021-22 rate of $533.31.

Policy Alternatives:
Alternative 1:
Not approve resolution confirming the assessment and ordering the levy for LLMD 98-1.

Pros: None

Cons: The Landscaping and Lighting Act of 1972 requires the legislative body to adopt a resolution confirming the diagram and assessment, not adopting a resolution of confirmation would jeopardize the City's ability to collect assessments for the maintenance and upkeep of LLMD 98-1.

Reason not recommended: To allow for the continued maintenance of LLMD 98-1, staff recommends approving the resolution confirming the assessment and ordering the levy for fiscal year 2022-23.

Fiscal Impact:
The levy and collection of assessments provides a funding resource for the City to improve and maintain public landscaping, irrigation systems, pedestrian lighting, gateway columns and entry signs within LLMD 98-1 Sinclair Horizon.

California Environmental Quality Act:
Levy and collection of assessment is not considered a project under CEQA as there will be no direct or reasonably foreseeable indirect physical change in the environment.

Recommendation:
1. Open the public hearing, receive any comments, and move to close the hearing following any testimony.
2. Adopt a Resolution confirming the assessment and ordering the levy for Landscaping and Lighting Maintenance Assessment District No. 98-1, Sinclair Horizon for Fiscal Year 2022-23.

Attachments:
1. Resolution
2. Annual Engineer's Report
3. Location Map

RESOLUTION NO. 9149

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS, CONFIRMING THE ASSESSMENT AND ORDERING THE LEVY FOR THE LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT NO. 98-1 FOR FISCAL YEAR 2022-23

WHEREAS, the City Council previously completed its proceedings in accordance with and pursuant to the Landscaping and Lighting Act of 1972, Part 2, Division 15 of the California Streets and Highways Code (commencing with Section 22500) (the "Act") to establish the Landscaping and Lighting Maintenance Assessment District (the "Assessment District"); and

WHEREAS, the City Council has retained NBS for the purpose of assisting with the annual levy of the Assessment District, and the preparation and filing of an Annual Report; and

WHEREAS, the City Council has, by previous resolution, declared its intention to hold a Public Hearing concerning the levy and collection of assessments within the Assessment District; and

WHEREAS, a Public Hearing has been held and concluded and notice thereof was duly given in accordance with Section 22626 of the Act; and

WHEREAS, at the time and place specified in the Resolution of Intention the City Council conducted such hearing and considered all objections to the assessment.

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

1. Confirmation of Assessment and Diagram: The City Council hereby confirms the assessment and the diagram as is described in full detail in the Annual Report on file with the City Clerk.

2. Levy of Assessment: Pursuant to Section 22631 of the Act, the adoption of this resolution shall constitute the levy of an assessment for the fiscal year commencing July 1, 2022, and ending June 30, 2023.

3. Ordering of the Levy: The City Council hereby orders NBS to prepare and submit the levy of assessments to Santa Clara County for placement on the Fiscal Year 2022-23 secured property tax roll.

PASSED AND ADOPTED this _____ day of _____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Wendy Wood, City Clerk

APPROVED:

_____
Rich Tran, Mayor

APPROVED AS TO FORM:

_____
Michael Mutaliplassi, City Attorney

CITY OF MILPITAS

Fiscal Year 2022/23 Annual Report For:

Landscaping and Lighting Maintenance Assessment District No. 98-1

April 2022

Prepared by:

NBS
helping communities fund tomorrow

nbsgov.com

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Toll free: 800.67

CITY OF MILPITAS
LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT NO. 98-1

455 East Calaveras Boulevard
Milpitas, California 95035
(408) 586-3000

CITY COUNCIL

Rich Tran, Mayor

Carmen Montano, Vice-Mayor

Evelyn Chua, Council Member

Karina R. Dominguez, Council Member

Anthony Phan, Council Member

CITY STAFF

Steve Erickson, PE, Engineering Director/City Engineer

Lauren Lai, Finance Director

Tony Ndah, Public Works Director

NBS

Tim Seufert, Client Services Director

Adina McCargo, Project Manager

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1. ENGINEER'S LETTER

WHEREAS, in 1998 the City Council of the City of Milpitas (the "City"), State of California, under the Landscaping and Lighting Act of 1972 (the "Act"), created the City of Milpitas Landscaping and Lighting Maintenance Assessment District No. 98-1 (the "District") to provide for the continued maintenance, operation, and administration of various improvements within the boundaries of the District; and

WHEREAS, the City Council has directed NBS to prepare and file a report for Fiscal Year 2022/23 in accordance with Chapter 1, Article 4 of the Act presenting plans and specifications describing the general nature, location and extent of the improvements to be maintained; an estimate of the costs to maintain, operate, and service the improvements for the District for the referenced fiscal year; a diagram for the District showing the area and properties to be assessed; and an assessment of the estimated costs to maintain and service the improvements, stating the net amount to be assessed upon all assessable lots or parcels within the District in proportion to the special benefit received.

NOW THEREFORE, the following assessments have been calculated in accordance with the assessment methodology adopted and approved by the City Council at the time of District formation, and are made to cover the portion of the estimated costs of maintenance, operation, and servicing of the improvements, to be paid by the assessable real property within the District in proportion to the special benefit received:

District	Parcels	2022/23 Maximum Assessment Rate per Lot(1)	2022/23 Actual Assessment Rate per Lot	2022/23 Net Amount to be Assessed(2)(3)
LLMAD 98-1	98	$533.31	$493.03	$48,317.00

(1) *The April 1, 2022 CPI was not available at the time of writing of this report. The Fiscal Year 2022/23 CPI increase was estimated using the February 2022/23 CPI.*

(2) *Amounts placed on the tax roll include the 1% Santa Clara County Collection Fee.*

(3) *This amount is only an estimate and does not reflect the final billed amount with rounding adjustments. Refer to Section 7 for the rounded figure.*

I identified all parcels which will have a special benefit conferred upon them from the improvements described in District's Plans and Specifications section of this Engineer's Report (the "Benefited Parcels"). For particulars as to the identification of said parcels, reference is made to the Assessment Diagram, a copy is on file in the office of the City Clerk.

I have assessed the costs and expenses of the improvements upon the Benefited Parcels. In making such assessment:

a. The proportionate special benefit derived by each Benefited Parcel from the improvements was determined in relationship to the entirety of the maintenance costs of the improvements;

b. No assessment has been imposed on any Benefited Parcel which exceeds the reasonable cost of the proportional special benefit conferred on such parcel from the improvements; and

c. Any general benefits from the improvements have been separated from the special benefits and only special benefits have been assessed.

I, the undersigned, respectfully submit the enclosed Engineer's Report and, to the best of my knowledge, information and belief, the Engineer's Report, Assessments, and the Assessment Diagrams herein have been prepared and computed in accordance with the order of the City Council of the City of Milpitas, the Act, and Article XIIID.

Steven Erickson

Steven Erickson, PE
Engineering Director/City Engineer

2. PLANS AND SPECIFICATIONS

The District provides for the continued administration, maintenance, operation, and servicing of various improvements located within the public right-of-way and dedicated easements within the boundaries of the District.

2.1 Location of Improvements

The District is located in the City of Milpitas, bounded on the east by Sinclair Frontage Road, on the west by Berryessa Creek, and on the north by Los Coches Street. The improvements maintained include public landscaping and irrigation improvements, including jogging paths, planter walls, grass berms, and ornamental planting, which are primarily situated within the public rights-of-way and dedicated public by easements within the District.

2.2 Landscaping Improvements

The landscaping and irrigation improvements were installed within the District in order to enhance the overall visual appearance for adjacent parcels. The improvements consist of the maintenance and operation of any or all public landscaping and irrigation improvements adjacent to curbs, including asphalt concrete jogging paths, planter walls, grass berms, and appurtenant irrigation systems; ornamental planting including lawns, shrubs, and trees, including necessary repairs, replacements, water, electric current, spraying, care, supervision, debris removal and all other items of work necessary and incidental for proper maintenance and operation thereof. The landscaping and irrigation improvements are collectively referred to as “landscaping improvements.” All such work will be performed in the following areas:

2.2.1 BERRYESSA CREEK

Due to the widening of the creek, improvements in Berryessa Creek were removed. Any improvements maintained in this reach (asphalt concrete jogging path, exercise equipment, planting, and irrigation) will no longer be maintained or improved.

2.2.2 LOS COCHES CREEK

1. A strip of land 812 feet long, 14 feet in width along the south bank of Los Coches Creek adjacent to Tract 9018. The improvements include an asphalt concrete jogging path, exercise equipment, planting, and irrigation.
2. A strip of land 5.5 feet wide within the Los Coches Street right-of-way between the back of sidewalk and the right-of-way along the south side of Los Coches Street between Berryessa Creek and Sinclair Frontage Rd. The improvements include planting and irrigation.

2.3 Capital Improvements

In Fiscal Year 2021/22, the City initiated the design and construction of landscape and irrigation renovation along portions of Los Coches Street and Sinclair Frontage Road. Design and construction is anticipated to continue through Fiscal Year 2022/23. Capital Improvements are scheduled to be complete by June 30, 2027.

2.4 Overhead

In addition to the hard costs of maintaining the improvements mentioned above, the City will incur costs for staff time and expenses related to the management and maintenance of the improvements within the District. Staff time includes oversight and coordination of both City and contractor provided services, annual tax roll preparation, and addressing property owner questions and concerns. These activities are directly related to the maintenance of the improvements, and without them the improvements could not be efficiently completed or properly maintained on an ongoing basis.

3. ESTIMATE OF COSTS

The estimated costs of maintenance and servicing of the improvements as described in the Plans and Specifications are summarized below.

3.1 District Budget

The Fiscal Year 2022/23 estimated cost budget for the maintenance and servicing of the improvements is as follows:

Description	Fiscal Year 2022/23 Budget
Maintenance Staff[1]	$30,000
Capital Equipment	0
Supplies	1,800
Utilities (Water, Electricity)	19,000
Reserve Fund	2,683
Capital Improvement Program	11,000
Maintenance Costs	**$64,483**
NBS	$3,450
City Staff District Administration	400
County Auditor-Controller Fee[2]	490
District Specific Costs	**$4,340**
Total District Costs	**$68,823**
General Benefit Contribution[3]	(20,506)
Operating Reserve Contribution	0
Capital Improvement Fund Contribution	0
Net Amount to be Assessed	**$48,317**
Total District Lots	**98**
Rate per Lot[4]	**$493.03**
Maximum Rate Per Lot – 2022/23[5]	**$533.31**

(1) *The City's Department of Public Works is the provider of Maintenance Services.*

(2) *County Auditor-Controller Fee is currently 1% of the total levy submittal.*

(3) *General Benefit Contribution is not applied to District Specific Costs as these are special benefits to the District.*

(4) *The Rate per lot equals the Net Amount to be Assessed / Total District Lots. The Rate cannot exceed the maximum rate.*

(5) *The April 1, 2022 CPI was not available at the time of writing of this report. The Fiscal Year 2022/23 CPI increase was estimated by using the February 2022/23 CPI.*

3.1.1 OPERATING RESERVE

It is the intent of the City to maintain an operating reserve which shall not exceed the estimated costs of maintenance and servicing of the improvements prior to December 10 of the fiscal year, or when the City expects to receive its apportionment of special assessments from the County, whichever is later. The operating reserve balance information for the District is as follows:

Estimated Fiscal Year Ending 6/30/2022 Operating Reserve Cash Balance	$22,317
Operating Reserve Collection for Fiscal Year 2022/23	2,683
Estimated Fiscal Year Ending 6/30/2023 Operating Reserve Cash Balance	**$25,000**

3.1.2 CAPITAL IMPROVEMENT BUDGET

In Fiscal Year 2021/22, the City initiated the design and construction of landscape and irrigation renovation along portions of Los Coches Street and Sinclair Frontage Road. As of December 31, 2021, the balance available for the Capital Improvement Project was $165,000. The City will utilize these funds, along with an annual collection of $11,000 via the District from Fiscal Year 2022/23 to Fiscal Year 2026/27, to finance the project.

Capital Improvements are scheduled to be complete by June 30, 2027.

4. SPECIAL AND GENERAL BENEFIT

The improvements defined in Section 2 are expected to confer certain special benefits to parcels within the District. The special benefits are described in this section. Figures in this section are derived from a Special v. General Benefit Analysis performed in Fiscal Year 2014/15.

4.1 Introduction

Pursuant to Article XIIID, all parcels that receive a special benefit conferred upon them as a result of the installation, implementation and maintenance of the improvements, services and activities shall be identified, and the proportionate special benefit derived by each identified parcel shall be determined in relationship to the entire costs of the installation, implementation and maintenance of the improvements, services and activities.

Article XIIID, Section 4(a) of the California Constitution limits the amount of any assessment to the proportional special benefit conferred on the property. Proposition 218 requires that the City separate the general benefit from special benefit, so that only special benefit may be assessed to properties within the District. Furthermore, Article XIIID also provides that publicly owned properties must be assessed unless there is clear and convincing evidence that those properties receive no special benefit from the assessment.

4.2 Special Benefits Identified

The improvements described in Section 2 are expected to confer certain special benefits to parcels within the District. The special benefits conferred to property within the District can be grouped into two primary benefit categories: aesthetic benefit and safety benefit. The two district benefit categories are further expanded upon below.

- **Improved Aesthetics:** The aesthetic benefit relates to the increase in the overall aesthetics as a result of the ongoing maintenance, servicing and operation of the improvements within the District. Street landscaping improvements improve the livability, commercial activity, appearance and desirability for properties within the District. Regular maintenance ensures that the improvements do not reach a state of deterioration or disrepair so as to be materially detrimental to properties adjacent to or in close proximity to the improvements. The overall appeal of the District is enhanced when improvements are in place and kept in a healthy and satisfactory condition. Conversely, appeal decreases when improvements are not well-maintained, unsafe, or destroyed by the elements or vandalism. Streetscapes have a significant effect on how people view and interact with their community[1]. With streetscapes that are safe and inviting, people are more likely to walk, which can help reduce automobile traffic, improve public health, stimulate local economic activity and attract residents and visitors to the community[2].
- **Increased Safety:** Well maintained areas mitigate crime, especially vandalism, and enhance pedestrian safety. A recent study found that after landscape improvements were installed, there

[1] Victoria Transport Policy Institute. (2011). *Community Livability. Helping to Create Attractive, Safe, Cohesive Communities.* Retrieved from http://www.vtpi.org/tdm/tdm97.htm.
[2] *Ibid.*

was a 46% decrease in crash rates across urban arterial and highway sites and a second study reviewed found a 5% to 20% reduction in mid-block crashes after trees and planters in urban arterial roads were put in place. In addition, there is less graffiti, vandalism, and littering in outdoor spaces with natural landscapes than in comparable plant-less spaces[3]. The Victoria Transport Policy Institute has found that streetscapes reduce traffic speeds and when combined with improved pedestrian crossing conditions can significantly reduce collisions[4].

4.3 General Benefits Identified

Section 4 of Article XIIID of the California Constitution provides that once a local agency which proposes to impose assessments on property has identified those parcels that will have special benefits conferred upon them and upon which an assessment will be imposed, the local agency must next "separate the general benefits from the special benefits conferred," and only the special benefits can be included in the amount of the assessments imposed.

General benefit is an overall and similar benefit to the public at large resulting from the maintenance of the District's improvements provided by the assessments levied. The improvements to be maintained by the District are located within the District boundaries only. There will be no District maintenance activities provided for improvements located outside of the District boundaries.

The ongoing maintenance of the District improvements will provide aesthetic and safety benefits to the property within the District. However, it is recognized that the ongoing District maintenance activities will also provide a level of benefit to some property within proximity to the District, as well as individuals passing through. Therefore, the general benefit created as a result of the District maintenance activities has been considered.

4.4 Quantification of Benefit

As a result of the maintenance and operation of the improvements, there will be a level of general benefit to people that do not live in or intend to conduct business within the District. In order for property within the District to be assessed only for that portion of special benefits received from the district's maintenance activities, general benefits provided by the ongoing maintenance of the improvements needs to be quantified. The amount of general benefit that is provided from the District's maintenance activities cannot be funded via property owners' assessments.

The landscaping improvements are primarily located along Los Coches Street and Sinclair Frontage Road and within the subdivision along Los Coches Creek and Berryessa Creek. A portion of the maintained landscaping provides some general benefit to pass-thru traffic. Per the City, there is 52,912 square feet of landscaping being maintained.

<u>Los Coches Creek and Berryessa Creek</u>

As result of the District maintenance activities, there will be a level of general benefit to pedestrians and vehicular traffic that are not associated with property in the District. As expressed by the Court in *Beutz v. County of Riverside* (2010), "... *courts of this state have long recognized that virtually all public improvement*

[3] *Wolf, Kathleen L. (2010). Safe Streets – A Literature Review. In: Green Cities: Good Health (www.greenhealth.washington.edu)*. College of the Environment, University of Washington.

[4] Victoria Transport Policy Institute. (2011). *Community Livability. Helping to Create Attractive, Safe, Cohesive Communities.* Retrieved from http://www.vtpi.org/tdm/tdm97.htm.

projects provide general benefits." A route beginning or ending with a parcel within the District does not include the "general public" for purposes of determining general benefit. The landscaping improvements along the south side of Los Coches Creek and Berryessa Creek are local in nature, however even though they are intended primarily for localized access, there is some portion of pedestrian traffic that may not be accessing the adjacent properties. The landscaping improvements are located adjacent to the backyard of homes, and access is only available by walking or bicycling. There is no vehicular access to these improvements.

The Summary of Travel Trends, 2009 National Household Travel Survey (NHTS) prepared by the U.S. Department of Transportation Federal Highway Administration analyzed the number of person trips by various modes of transportations such as private vehicle, transit, walking or some other means of transportation. According to the Pacific Division data extracted from the 2009 NHTS database, of the annual 181,703 (in millions) total person trips, 21,252 (in millions) or 11.70% of those person trips were made by using walking as their mode of transportation, and 2,066 (in millions) or 1.14% of those person trips were made by bicycling[5].

According to the U.S. Census Bureau (2010), the average household size in the City is 3.34 persons[6]. Based on this average household size, and considering there are 98 residential units within the District, there are approximately 327 people residing within the District boundaries. There are an estimated 163 residential units in close proximity, but outside of the District boundaries. Based on the City's average household size, there are approximately 544 persons residing outside of the District boundaries, but have access to the landscaping improvements.

Community	Estimated Number of Residential Units	Estimated Number of Persons(1)
District	98	327
Sundrop Subdivision	83	277
Sinclair Renaissance Subdivision	80	267
Total Residential Population	**261**	**871**

(1) *U.S. Census Bureau (2010) average household size in the City is 3.34 persons.*[7]

In order to determine the estimated total number of persons who are within close proximity to the landscaping improvements, and would utilize walking or bicycling as their mode of transportation, we applied the 12.84% (11.70% walking, 1.14% bicycling) of person trips reported from the NHTS Pacific Division study, to the total nearby residential population (871). There are approximately 112 people within close proximity of the District that utilize walking or bicycling as their mode of transportation.

In order to determine the portion of the 112 persons that reside within the District, we applied the 2009 NHTS walking trip percentage (12.84%) to the District population (327). Approximately 42 people within the District boundaries use walking or bicycling as their primary mode of transportation. Therefore, the total

[5] *U.S Department of Transportation. Federal Highway Administration. (2011). Summary of Travel Trends: 2009 National Household Travel Survey. (Report No. FHWA-PL-11-022). Retrieved from http://nhts.ornl.gov*

[6] *U.S. Census Bureau. (2010). Profile of General Population and Housing Characteristics: 2010, 2010 Demographic Profile Data. Milpitas, C.A. Retrieved March 23, 2015, http://quickf acts.census.gov/qf d/states/06/0647766.html*

[7] *Ibid.*

surrounding neighborhood area population, located outside of the District boundaries, but in close proximity the landscaping improvements, that uses walking or bicycling as their primary mode of transportation is estimated to be 70 people.

Community	Estimated Number of Persons
District	42
Sundrop Subdivision	36
Sinclair Renaissance Subdivision	34
Walking or Bicycling Population	**112**

In order to obtain a better picture of the overall level of general benefit provided by the landscaping improvements, the pedestrian traffic that utilizes walking or bicycling as the mode of transportation that will seek out and use the District improvements, but live outside of the District, must be considered. The 2009 NHTS further details the purposes of the reported walking (21,252 in millions) and bicycling (2,066 in millions) trips; based on the property types people entering the District would most likely do so for social or recreational activities.

The following details the number of walking and bicycling trips, based on the 2009 NHTS study, for each of the activities that are the most likely reasons people outside of the District would use the landscaping improvements:

Trip Purpose	Number of Walking or Bicycling Trips (in millions)
Social/Recreational	6,442
Total	**6,442**

Of the total number of walking and bicycling trips reported, 6,442 (in millions) or 27.63% are for purposes that persons outside of the District may use the landscaping improvements. Applying this percentage (27.63%) to the number of people walking or bicycling as their mode of transportation and that reside outside of the District (70), there are approximately 19 people (general benefit) that may use the landscaping improvements, but do not reside within the District. Taking the 19 people that may walk or bicycle, but reside outside of the District, divided by total residential population with access to the landscaping improvements (871), the estimated percentage of persons, engaging in what is considered general benefit because they do not reside within the District, represents 2.21%.

Los Coches Street and Sinclair Frontage Road

The City does not have a study showing traffic volume along Los Coches Street and Sinclair Frontage Road along the District boundaries. The portion of the maintained landscaping that is located along Los Coches Street and Sinclair Frontage Road provides some general benefit to pass-through traffic. Before the determination and allocation of the percentage of special and general benefit for the District can be made, the estimated pass-through traffic must be computed. The pass-through trips are vehicles driving along the maintained streets within the District for a portion of their trips, but not living or conducting business in the District and benefiting from the landscaping improvements in place.

The Sundrop and Sinclair Renaissance residential communities are located directly across the street and next to the District, and vehicles entering and/or exiting these communities in all likelihood are passing by a portion of the landscaping improvements for a portion of their trip. In lieu of having a study that identifies the pass-through traffic, the estimated number of trips generated for each community has been calculated based on the number of units and average number of trips per dwelling unit.

Community	Number of Residential Units(1)	Estimated Number of Daily Vehicle Trips(2)	% of Total Daily Vehicle Trips(3)
District	98	933.0	44.34%
Sundrop Subdivision	83	790.2	37.56%
Sinclair Renaissance Subdivision	80	380.8	18.10%
Total	**261**	**2,104.0**	**100.00%**

(1) *Number of Residential Units is from the City's Approved Projects map.*[8]

(2) *Per the ITE Trip Generation Report a single family residence generates an average of 9.52 trips per dwelling unit.*[9]

(3) *Number of daily trips has been reduced by 50% to account for vehicles entering and exiting the community from the opposite direction on Sinclair Frontage Road, and not driving along the portion of Los Coches Street and Sinclair Frontage Road with landscaping improvements maintained by the District.*

As detailed above, based on the average number of daily vehicle trips generated for the communities in close proximity to the District, 1,171 (55.66%) are generated by residential units located outside of the District (general benefit).

<u>All Locations and Landscaping Improvements – Residential Pass-thru Benefit</u>

The general benefit percentages determined in the previous sections for Los Coches Creek and Berryessa Creek (2.21%) and Los Coches Street and Sinclair Frontage Road (55.66%) were then applied to each corresponding location with landscaping improvements. The landscaping square footage being maintained by the District was provided by the City's Public Works Department. The general benefit percentage for each street type was multiplied by the total square footage being maintained for such street. The general benefit square footage was summed for all street segments and divided into the total square footage of all landscaping maintenance. The result is the combined general benefit percentage. The following table details this calculation.

Street Name	Total Square Footage	General Benefit Percentage	General Benefit Square Footage
Los Coches Creek	4,572	2.21%	101
Berryessa Creek	21,025	2.21%	465
Los Coches Street	24,747	55.66%	13,773
Sinclair Frontage	2,568	55.66%	1,429
Totals:	**52,912**		**15,768**
Landscaping General Benefit			**29.80%**

Based on the above calculations, the general benefit portion of the improved aesthetics and increased safety resulting from the landscaping improvements is estimated to be 29.80%.

[8] City of Milpitas. (2013). Approved Development Projects. Retrieved from http://www.ci.milpitas.ca.gov/government/planning/proj_approved.asp

[9] *Trip Generation, 9th Edition: An Informational Report of the Institute of Transportation Engineers. (2012). Washington, DC: Institute of Transportation Engineers.*

Public at Large General Benefit

Given the location and nature of the improvements, it is very unlikely the public at large would seek out or use the landscaping improvements within the District. In addition, there are more direct routes to access the industrial complexes/businesses located to the south of the District than the 2 lane Los Coches Street and Sinclair Frontage Road. Nevertheless, it is perceivable that members of the public at large may pass-thru a portion of the landscaping improvements, even if it's lost or leisure traffic. As such, general benefit of 2.00% has been assigned for the landscaping improvements to the public at large

4.4.1 COLLECTIVE DISTRICT-WIDE GENERAL BENEFIT

Since the District is comprised of improved aesthetics and increased safety benefits resulting from the collective landscaping improvements, the activity of both pedestrians and vehicles, and the public at large must be addressed in a collective form rather than independently. The sum of the calculated general benefits is the total general benefit related to all pass-thru traffic. This general benefit result is provided in the table below:

Residential Pass-thru General Benefit	29.80%
Public at Large General Benefit	2.00%
Total General Benefit	**31.80%**

The general benefit, which is the percentage of the total budget that must be funded through sources other than assessments, is 31.80%. The special benefit then, which is the percentage of the budget that may be funded by assessments, is 68.20%.

5. METHOD OF ASSESSMENT

5.1 Method of Assessment Spread

All parcels in the District on which residential dwellings will be constructed specially benefit from the improvements to an equivalent extent. These parcels are therefore assessed on a per lot basis for the maintenance and operation of the District, including incidentals and appurtenances, and will include all the costs of maintenance and/or operating the improvements. As outlined in Section 4, the total amount of general benefit from the improvements is determined to be 31.80%.

The preliminary maximum assessment rate for Fiscal Year 2022/23 is $533.31. The actual assessment rate levied on each taxable parcel for Fiscal Year 2022/23 is $493.03.

Each year the maximum assessment rate shall be increased by the percentage change from April 1st of the prior year to April 1st of the current year by the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Indexes, Pacific Cities and U.S. City Average, San Francisco-Oakland-Hayward. The April 1, 2022 CPI was not available at the time of writing of this report. For purposes of this report, the CPI increase was estimated by using the February 2022/23 CPI.

5.2 Maximum Assessment Rates

The following table provides the historical maximum assessment rates for Fiscal Year 2000/01 through the current fiscal year:

Fiscal Year	CPI	Percentage Increase[1]	Maximum Rate
2000/01	178.7	N/A	$292.803
2001/02	189.1	5.82%	309.844
2002/03	193.0	2.06%	316.234
2003/04	197.3	2.23%	323.280
2004/05	198.3	0.51%	324.918
2005/06	202.5	2.12%	331.800
2006/07	208.9	3.16%	342.286
2007/08	215.842	3.32%	353.661
2008/09	222.074	2.89%	363.872
2009/10	223.854	0.80%	366.789
2010/11	227.697	1.72%	373.086
2011/12	234.121	2.82%	383.611
2012/13	238.985	2.08%	391.581
2013/14	244.675	2.38%	400.904
2014/15	251.495	2.79%	412.079
2015/16	257.622	2.44%	422.118
2016/17	264.565	2.70%	433.494
2017/18	274.589	3.79%	449.919
2018/19	283.422	3.22%	464.392
2019/20	294.801	4.01%	483.037
2020/21	298.074	1.11%	488.400
2021/22	309.419	3.81%	506.988
2022/23	320.195	5.19%[2]	533.318

(1) *Percentage increase from April 1 of the prior year to April 1 of the current year in the US Department of Labor, Bureau of Labor Statistics, Consumer Price Index, Pacific Cities and US City Average, San Francisco-Oakland-Hayward.*

(2) *The April 1, 2022 CPI was not available at the time of writing of this report. The Fiscal Year 2022/23 CPI increase was estimated using the February 2022/23 CPI.*

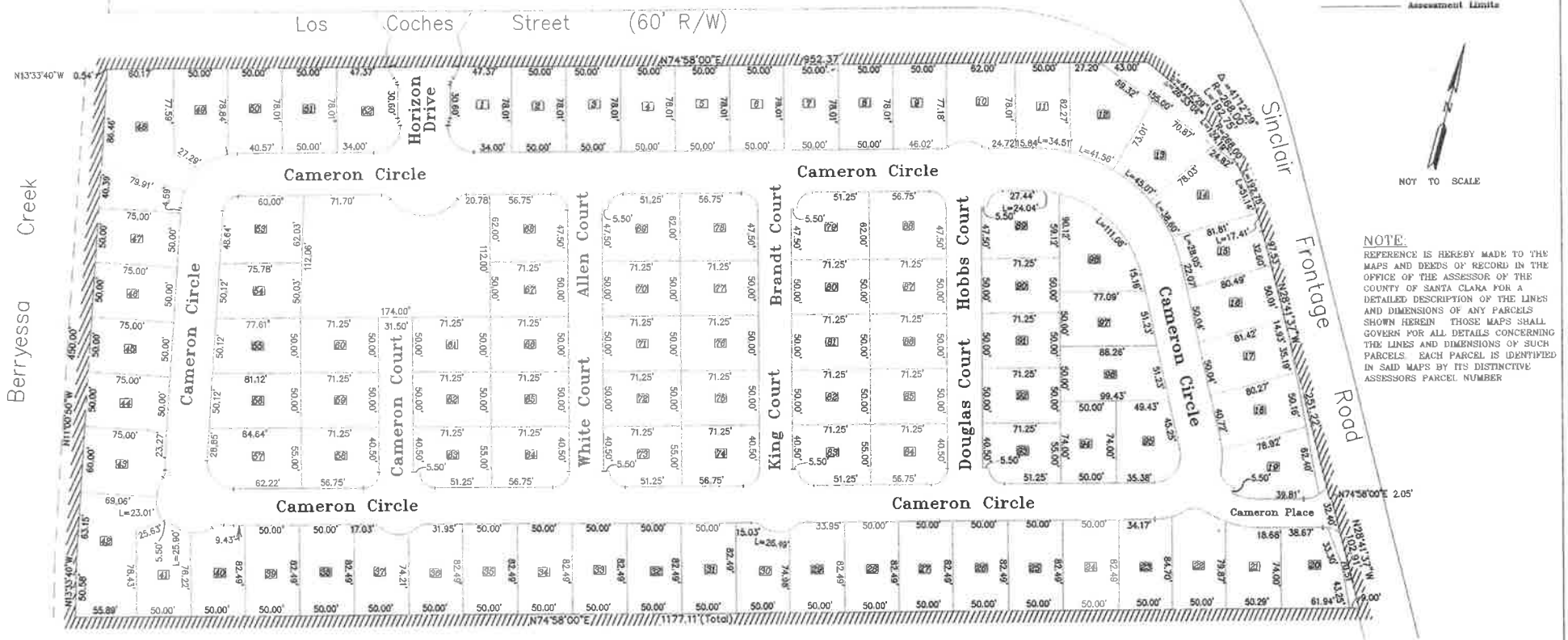
5.3 Appeals

Any property owner who feels that the amount of their assessment is in error as a result of incorrect information being used to apply the foregoing method of spread, may file an appeal with the Finance Director of the City. Any such appeal is limited to correction of an assessment during the current or, if before July 1, the upcoming fiscal year. Upon the filing of any such appeal, the Finance Director shall promptly review the information provided by the property owner and if he/she finds that the assessment should be modified, he/she shall have the authority to make the appropriate changes in the assessment roll. If any such changes are provided after the assessment roll has been filed with the County for collection, the Finance Director is authorized to refund to the property owner the amount of any approved reduction.

6. ASSESSMENT DIAGRAM

The following page provides a copy of the assessment diagram of the District.

ASSESSMENT DIAGRAM NUMBER	ASSESSMENT PARCEL NUMBER	14	86-48-014	29	86-48-029	44	86-48-044	59	86-48-059	74	86-48-074	89	86-48-089
1	86-48-001	15	86-48-015	30	86-48-030	45	86-48-045	60	86-48-060	75	86-48-075	90	86-48-090
2	86-48-002	16	86-48-016	31	86-48-031	46	86-48-046	61	86-48-061	76	86-48-076	91	86-48-091
3	86-48-003	17	86-48-017	32	86-48-032	47	86-48-047	62	86-48-062	77	86-48-077	92	86-48-092
4	86-48-004	18	86-48-018	33	86-48-033	48	86-48-048	63	86-48-063	78	86-48-078	93	86-48-093
5	86-48-005	19	86-48-019	34	86-48-034	49	86-48-049	64	86-48-064	79	86-48-079	94	86-48-094
6	86-48-006	20	86-48-020	35	86-48-035	50	86-48-050	65	86-48-065	80	86-48-080	95	86-48-095
7	86-48-007	21	86-48-021	36	86-48-036	51	86-48-051	66	86-48-066	81	86-48-081	96	86-48-096
8	86-48-008	22	86-48-022	37	86-48-037	52	86-48-052	67	86-48-067	82	86-48-082	97	86-48-097
9	86-48-009	23	86-48-023	38	86-48-038	53	86-48-053	68	86-48-068	83	86-48-083	98	86-48-098
10	86-48-010	24	86-48-024	39	86-48-039	54	86-48-054	69	86-48-069	84	86-48-084		
11	86-48-011	25	86-48-025	40	86-48-040	55	86-48-055	70	86-48-070	85	86-48-085		
12	86-48-012	26	86-48-026	41	86-48-041	56	86-48-056	71	86-48-071	86	86-48-086		
13	86-48-013	27	86-48-027	42	86-48-042	57	86-48-057	72	86-48-072	87	86-48-087		
		28	86-48-028	43	86-48-043	58	86-48-058	73	86-48-073	88	86-48-088		



NOTE:
REFERENCE IS HEREBY MADE TO THE MAPS AND DEEDS OF RECORD IN THE OFFICE OF THE ASSESSOR OF THE COUNTY OF SANTA CLARA FOR A DETAILED DESCRIPTION OF THE LINES AND DIMENSIONS OF ANY PARCELS SHOWN HEREIN. THOSE MAPS SHALL GOVERN FOR ALL DETAILS CONCERNING THE LINES AND DIMENSIONS OF SUCH PARCELS. EACH PARCEL IS IDENTIFIED IN SAID MAPS BY ITS DISTINCTIVE ASSESSORS PARCEL NUMBER

An assessment was levied by the City Council of the City of Milpitas, County of Santa Clara, State of California on the lots, pieces and parcels of land shown on this assessment diagram. Said assessment was levied on the 3rd day of June 2014, said assessment diagram and the assessment roll were recorded in the Office of the Superintendent of Streets of said City on the 3rd day of June 2014. Reference is made to the assessment roll recorded in the Office of the Superintendent of Streets for the exact amount of each assessment levied against each parcel of land shown on this assessment diagram.

Mary Lavelle
City Clerk of the City of Milpitas

Filed in the Office of the City Clerk of the City of Milpitas, County of Santa Clara, State of California this 20th day of May 2014.

Mary Lavelle
City Clerk of the City of Milpitas

Recorded in the Office of the Superintendent of Streets of the City of Milpitas, County of Santa Clara, State of California, this 3rd day of June 2014.

Superintendent of Streets
City of Milpitas

Figure 1

PART F

ASSESSMENT DIAGRAM
LANDSCAPING AND LIGHTING
MAINTENANCE ASSESSMENT DISTRICT
NO. 98-1

MILPITAS CALIFORNIA

June

7. ASSESSMENT ROLL

Assessor's parcel identification, for each lot or parcel within the District, shall be based on the Santa Clara County Assessor's secured roll data for the applicable year in which this report is prepared and is incorporated herein by reference.

A listing of assessor's parcels assessed within the District for Fiscal Year 2022/23, along with the assessment amounts, is on file in the office of the City Clerk and incorporated herein by reference. Based on County Assessor's secured roll data, current assessor's parcels, including corrected and/or new assessor's parcels, will be submitted and/or resubmitted to the Santa Clara County Auditor/Controller. The annual assessment amount to be levied and collected for the resubmitted parcel(s) shall be determined in accordance with the method of apportionment and assessment rate approved in this report. Therefore, if a single assessor's parcel has a status change in development, other land use change, or subdivides into multiple assessor's parcels, the assessment amounts applied to each of the new assessor's parcels shall be recalculated and applied according to the approved method of apportionment and assessment rate rather than a proportionate share of the original assessment amount.

City of Milpitas
LLMAD No. 98-1
Final Billing Detail Report for Fiscal Year 2022/23

APN	Assessment ID	Situs Address	Fiscal Year 2022/23 Levy
086-48-001	1	872 CAMERON CIR	$493.02
086-48-002	2	868 CAMERON CIR	493.02
086-48-003	3	864 CAMERON CIR	493.02
086-48-004	4	860 CAMERON CIR	493.02
086-48-005	5	856 CAMERON CIR	493.02
086-48-006	6	852 CAMERON CIR	493.02
086-48-007	7	848 CAMERON CIR	493.02
086-48-008	8	844 CAMERON CIR	493.02
086-48-009	9	840 CAMERON CIR	493.02
086-48-010	10	836 CAMERON CIR	493.02
086-48-011	11	832 CAMERON CIR	493.02
086-48-012	12	828 CAMERON CIR	493.02
086-48-013	13	824 CAMERON CIR	493.02
086-48-014	14	820 CAMERON CIR	493.02
086-48-015	15	816 CAMERON CIR	493.02
086-48-016	16	812 CAMERON CIR	493.02
086-48-017	17	808 CAMERON CIR	493.02
086-48-018	18	804 CAMERON CIR	493.02
086-48-019	19	800 CAMERON CIR	493.02
086-48-020	20	1004 CAMERON PL	493.02
086-48-021	21	1000 CAMERON PL	493.02
086-48-022	22	996 CAMERON PL	493.02
086-48-023	23	992 CAMERON CIR	493.02
086-48-024	24	988 CAMERON CIR	493.02
086-48-025	25	984 CAMERON CIR	493.02
086-48-026	26	980 CAMERON CIR	493.02
086-48-027	27	976 CAMERON CIR	493.02
086-48-028	28	972 CAMERON CIR	493.02
086-48-029	29	968 CAMERON CIR	493.02
086-48-030	30	964 CAMERON CIR	493.02
086-48-031	31	960 CAMERON CIR	493.02
086-48-032	32	956 CAMERON CIR	493.02
086-48-033	33	952 CAMERON CIR	493.02
086-48-034	34	948 CAMERON CIR	493.02
086-48-035	35	944 CAMERON CIR	493.02
086-48-036	36	940 CAMERON CIR	493.02
086-48-037	37	936 CAMERON CIR	493.02
086-48-038	38	932 CAMERON CIR	493.02
086-48-039	39	928 CAMERON CIR	493.02
086-48-040	40	924 CAMERON CIR	493.02
086-48-041	41	920 CAMERON CIR	493.02
086-48-042	42	916 CAMERON CIR	493.02

Slight variances may occur due to rounding

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City of Milpitas
LLMAD No. 98-1
Final Billing Detail Report for Fiscal Year 2022/23

APN	Assessment ID	Situs Address	Fiscal Year 2022/23 Levy
086-48-043	43	912 CAMERON CIR	493.02
086-48-044	44	908 CAMERON CIR	493.02
086-48-045	45	904 CAMERON CIR	493.02
086-48-046	46	900 CAMERON CIR	493.02
086-48-047	47	896 CAMERON CIR	493.02
086-48-048	48	892 CAMERON CIR	493.02
086-48-049	49	888 CAMERON CIR	493.02
086-48-050	50	884 CAMERON CIR	493.02
086-48-051	51	880 CAMERON CIR	493.02
086-48-052	52	876 CAMERON CIR	493.02
086-48-053	53	899 CAMERON CIR	493.02
086-48-054	54	903 CAMERON CIR	493.02
086-48-055	55	907 CAMERON CIR	493.02
086-48-056	56	911 CAMERON CIR	493.02
086-48-057	57	915 CAMERON CIR	493.02
086-48-058	58	211 CAMERON CT	493.02
086-48-059	59	203 CAMERON CT	493.02
086-48-060	60	195 CAMERON CT	493.02
086-48-061	61	200 CAMERON CT	493.02
086-48-062	62	208 CAMERON CT	493.02
086-48-063	63	216 CAMERON CT	493.02
086-48-064	64	207 WHITE CT	493.02
086-48-065	65	199 WHITE CT	493.02
086-48-066	66	191 WHITE CT	493.02
086-48-067	67	183 ALLEN CT	493.02
086-48-068	68	175 ALLEN CT	493.02
086-48-069	69	180 ALLEN CT	493.02
086-48-070	70	188 ALLEN CT	493.02
086-48-071	71	196 WHITE CT	493.02
086-48-072	72	204 WHITE CT	493.02
086-48-073	73	212 WHITE CT	493.02
086-48-074	74	203 KING CT	493.02
086-48-075	75	195 KING CT	493.02
086-48-076	76	187 KING CT	493.02
086-48-077	77	179 BRANDT CT	493.02
086-48-078	78	171 BRANDT CT	493.02
086-48-079	79	176 BRANDT CT	493.02
086-48-080	80	184 BRANDT CT	493.02
086-48-081	81	192 KING CT	493.02
086-48-082	82	200 KING CT	493.02
086-48-083	83	208 KING CT	493.02
086-48-084	84	199 DOUGLAS CT	493.02

Slight variances may occur due to rounding

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City of Milpitas

LLMAD No. 98-1

Final Billing Detail Report for Fiscal Year 2022/23

APN	Assessment ID	Situs Address	Fiscal Year 2022/23 Levy
086-48-085	85	191 DOUGLAS CT	493.02
086-48-086	86	183 DOUGLAS CT	493.02
086-48-087	87	175 HOBBS CT	493.02
086-48-088	88	167 HOBBS CT	493.02
086-48-089	89	174 HOBBS CT	493.02
086-48-090	90	182 HOBBS CT	493.02
086-48-091	91	190 DOUGLAS CT	493.02
086-48-092	92	198 DOUGLAS CT	493.02
086-48-093	93	206 DOUGLAS CT	493.02
086-48-094	94	991 CAMERON CIR	493.02
086-48-095	95	995 CAMERON CIR	493.02
086-48-096	96	811 CAMERON CIR	493.02
086-48-097	97	815 CAMERON CIR	493.02
086-48-098	98	831 CAMERON CIR	493.02
98 Accounts			**$48,315.96**
98 Total Accounts			**$48,315.96**

Slight variances may occur due to rounding

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CITY OF MILPITAS

LANDSCAPING MAINTENANCE DISTRICT (LMD) 98-1

(N.T.S.)

2022-2023 FISCAL YEAR LANDSCAPE AREA FUNDED FOR MAINTENANCE

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Conduct a Public Hearing and Adopt a Resolution Confirming the Assessment and Ordering the Levy for the Landscaping and Lighting Maintenance Assessment District No. 95-1, McCarthy Ranch for Fiscal Year 2022-23 (Staff Contact Steve Erickson, Engineering Director, 408-586-3301)**
Category:	Public Hearings-Community Development
Meeting Date:	6/21/2022
Recommendation:	Open the public hearing, receive any comments, and move to close the hearing following any testimony, and Adopt a Resolution confirming the assessment and ordering the levy for Landscaping and Lighting Maintenance Assessment District No. 95-1, McCarthy Ranch for Fiscal Year 2022-23.

Background:
Landscaping and Lighting Maintenance Assessment District No. 95-1, McCarthy Ranch (LLMD 95-1) provides for the maintenance and improvement of public landscaping, irrigation systems, pedestrian lighting, gateway columns and entry signs along portions of North McCarthy Boulevard and the Ranch Drive gateway between State Route 237 and Dixon Landing Road in the areas as shown on the attached location map attached.

Analysis:
On May 17, 2022, the City Council adopted Resolution No.9150 approving the Annual Engineer's Report and adopted Resolution No.9151 declaring its intention to levy and collect assessment for Fiscal Year 2022-23 for the Landscaping and Lighting Maintenance Assessment District No. 95-1.

An annual public hearing is necessary to adopt a resolution confirming the assessment and ordering the levy for the Landscape and Lighting Maintenance Assessment District 95-1 for Fiscal Year 2022-23 **(Attachment 1),** and the Annual Engineer's Report **(Attachment 2)** to provide funds for the district. The total assessment for fiscal year 2022-23 is $0.0349 per lot square foot, with an assessment rate not exceeding the maximum rate per square foot. The FY 2022-23 rate is approximately 4.49% higher than the previous year FY 2021-22 rate of $0.03330.

Policy Alternatives:

Alternative 1:
Not approve resolution confirming the assessment and ordering the levy for LLMD 95-1.

Pros: None

Cons: The Landscaping and Lighting Act of 1972 requires the legislative body to adopt a resolution confirming the diagram and assessment, not adopting a resolution of confirmation would jeopardize the City's ability to collect assessments for the maintenance and upkeep of LLMD 95-1.

Reason not recommended: To allow for the continued maintenance of LLMD 95-1, staff recommends approving the resolution confirming the assessment and ordering the levy for fiscal year 2022-23.

Fiscal Impact:
The levy and collection of assessments provides a funding resource for the City to improve and maintain public landscaping, irrigation systems, pedestrian lighting, gateway columns and entry signs within LLMD 95-1 McCarthy Ranch.

California Environmental Quality Act:
Levy and collection of assessment is not considered a project under CEQA as there will be no direct or reasonably foreseeable indirect physical change in the environment.

Recommendation:
1. Open the public hearing, receive any comments, and move to close the hearing following any testimony.
2. Adopt a Resolution confirming the assessment and ordering the levy for Landscaping and Lighting Maintenance Assessment District No. 95-1, McCarthy Ranch for Fiscal Year 2022-23.

Attachments:
a) Resolution
b) Annual Engineer's Report
c) Location Map

RESOLUTION NO. 9151

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS CONFIRMING THE ASSESSMENT AND ORDERING THE LEVY FOR THE LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT NO. 95-1 FOR FISCAL YEAR 2022-23

WHEREAS, the City Council previously completed its proceedings in accordance with and pursuant to the Landscaping and Lighting Act of 1972, Part 2, Division 15 of the California Streets and Highways Code (commencing with Section 22500) (the "Act") to establish the Landscaping and Lighting Maintenance Assessment District (the "Assessment District"); and

WHEREAS, the City Council has retained NBS for the purpose of assisting with the annual levy of the Assessment District, and the preparation and filing of an Annual Report; and

WHEREAS, the City Council has, by previous resolution, declared its intention to hold a Public Hearing concerning the levy and collection of assessments within the Assessment District; and

WHEREAS, a Public Hearing has been held and concluded and notice thereof was duly given in accordance with Section 22626 of the Act; and

WHEREAS, at the time and place specified in the Resolution of Intention the City Council conducted such hearing and considered all objections to the assessment.

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

1. Confirmation of Assessment and Diagram: The City Council hereby confirms the assessment and the diagram as is described in full detail in the Annual Report on file with the City Clerk.

2. Levy of Assessment: Pursuant to Section 22631 of the Act, the adoption of this Resolution shall constitute the levy of an assessment for the fiscal year commencing July 1, 2022 and ending June 30, 2023.

3. Ordering of the Levy: The City Council hereby orders NBS to prepare and submit the levy of assessments to Santa Clara County for placement on the Fiscal Year 2022-23 secured property tax roll.

PASSED AND ADOPTED this _____ day of _____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Wendy Wood, City Clerk

APPROVED:

_____
Rich Tran, Mayor

APPROVED AS TO FORM:

_____
Michael Mutaliplassi, City Attorney

CITY OF MILPITAS

Fiscal Year 2022/23 Annual Report For:

Landscaping and Lighting Maintenance Assessment District No. 95-1

April 2022

Prepared by:

NBS
helping communities fund tomorrow

nbsgov.com

Corporate Headquarters
32605 Temecula Parkway, Suite 100
Temecula, CA
Toll free: 800.67

CITY OF MILPITAS
LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT NO. 95-1

455 East Calaveras Boulevard
Milpitas, California 95035
Phone (408) 586-3000

CITY COUNCIL

Rich Tran, Mayor

Carmen Montano, Vice-Mayor

Evelyn Chua, Council Member

Karina R. Dominguez, Council Member

Anthony Phan, Council Member

CITY STAFF

Steve Erickson, PE, Engineering Director/City Engineer

Lauren Lai, Finance Director

Tony Ndah, Public Works Director

NBS

Tim Seufert, Client Services Director

Adina McCargo, Project Manager

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1. ENGINEER'S LETTER

WHEREAS, in 1995 the City Council of the City of Milpitas (the "City"), State of California, under the Landscaping and Lighting Act of 1972 (the "Act"), created the City of Milpitas Landscaping and Lighting Maintenance Assessment District No. 95-1 (the "District") in order to provide for the continued maintenance, operation, and administration of various improvements within the boundaries of the District; and

WHEREAS, the City Council has directed NBS to prepare and file a report for Fiscal Year 2022/23 in accordance with Chapter 1, Article 4 of the Act presenting plans and specifications describing the general nature, location and extent of the improvements to be maintained; an estimate of the costs to maintain, operate, and service the improvements for the District for the referenced fiscal year; a diagram for the District showing the area and properties to be assessed; and an assessment of the estimated costs to maintain and service the improvements, stating the net amount to be assessed upon all assessable lots or parcels within the District in proportion to the special benefit received.

NOW THEREFORE, the following assessments have been calculated in accordance with the assessment methodology adopted and approved by the City Council at the time of District formation, and are made to cover the portion of the estimated costs of maintenance, operation, and servicing of the improvements, to be paid by the assessable real property within the District in proportion to the special benefit received:

District	Parcels	2022/23 Maximum Assessment Rate per Lot Sq. Ft.(1)	2022/23 Actual Assessment Rate per Lot Sq. Ft.	2022/23 Net Amount to be Assessed(2)(3)
LLMAD 95-1	44	$0.0516	$0.0349	$411,156

(1) *The April 1, 2022 CPI was not available at the time of writing of this report. The Fiscal Year 2022/23 CPI increase was estimated using the February 2022/23 CPI.*

(2) *Amounts placed on the tax roll include the 1% Santa Clara County Collection Fee.*

(3) *This amount is only an estimate and does not reflect the final billed amount with rounding adjustments. Refer to Section 7 for the rounded figure.*

I identified all parcels which will have a special benefit conferred upon them from the improvements described in District's Plans and Specifications section of this Engineer's Report (the "Benefited Parcels"). For particulars as to the identification of said parcels, reference is made to the Assessment Diagram, a copy of which is on file in the office of the City Clerk.

I have assessed the costs and expenses of the improvements upon the Benefited Parcels. In making such assessment:

a. The proportionate special benefit derived by each Benefited Parcel from the improvements was determined in relationship to the entirety of the maintenance costs of the improvements;

b. No assessment has been imposed on any Benefited Parcel which exceeds the reasonable cost of the proportional special benefit conferred on such parcel from the improvements; and

c. Any general benefits from the improvements have been separated from the special benefits and only special benefits have been assessed.

I, the undersigned, respectfully submit the enclosed Engineer's Report and, to the best of my knowledge, information and belief, the Engineer's Report, Assessments, and the Assessment Diagrams herein have been prepared and computed in accordance with the order of the City Council of the City of Milpitas, the Act, and Article XIIID.

Steven Erickson

Steven Erickson, PE
Engineering Director/City Engineer

2. PLANS AND SPECIFICATIONS

The District provides for the continued administration, maintenance, operation, and servicing of various improvements located within the public right-of-way and dedicated easements within the boundaries of the District.

2.1 Location of Improvements

The District is located on the west side of the City of Milpitas, bounded on the east by State Route 880, on the west by Coyote Creek, on the south by State Route 237, and on the north by Dixon Landing Road. The improvements maintained include public landscaping and irrigation improvements, including jogging paths, pedestrian lighting, gateway improvements, and entry signage, which are primarily situated within the public right-of-way and dedicated public easements within the District.

2.2 Landscaping Improvements

Landscaping, pedestrian lighting, gateway, and signage improvements were installed along the roadways and sidewalks within the District to enhance the overall visual appearance for adjacent parcels.

The improvements within the District consist of the maintenance and installation of any or all public landscaping and irrigation improvements adjacent to curbs of the following described streets, including jogging paths, planter walls, grass berms, pedestrian lighting and appurtenant irrigation systems, ornamental planting including lawns, shrubs, and trees; installation and maintenance of gateway columns and entry signs. Such maintenance includes all necessary repairs, replacements, water, electric current, spraying, care, supervision, debris removal and all other items of work necessary and incidental for property maintenance and operation thereof. The landscaping, irrigation, pedestrian lighting, gateway, and signage improvements are collectively referred to as “landscaping improvements.” All such work will be performed in the following areas:

2.2.1 N. MCCARTHY BOULEVARD

1. A strip of land including an earth berm approximately 50 feet in width from face of each curb line, from the southerly connection with Ranch Drive northerly 2,400 feet, more or less, to the northerly connection with Ranch Drive. A strip of land including a grass berm approximately 35 feet in width, west of the face of westerly curb, along the West Side of N. McCarthy Boulevard, from the southerly connection with Ranch Drive, northerly 2,400 feet, more or less. The initial phase includes a strip of land 6 feet wide on the west side of McCarthy Boulevard.
2. Commencing at a location approximately 2,400 feet north of State Route 237 thence proceeding north to the northern boundary of Lands of N. McCarthy, 7,800 feet more or less, a strip of land approximately 27 to 34 feet in width on each side along the east and west sides of McCarthy Boulevard between the northerly connection with Ranch Drive and Dixon Landing Road.
3. A median island from the southerly intersection with Ranch Drive northerly to the intersection with Dixon Landing Road.

4. Gateway Improvements, at the southerly intersection of N. McCarthy Boulevard and Ranch Drive and southerly of Bridge No. 1 along N. McCarthy Boulevard, including curved stone planter walls, gateway columns with entry sign appurtenant mounding ornamental plantings including flat work, trees and ground cover, irrigation systems; all as shown on landscape plans.
5. Lighting costs in the District are limited to the supplemental pedestrian lights installed on the east side of McCarthy Boulevard between the two intersections at Ranch Drive and McCarthy Boulevard. The conventional lighting along McCarthy Boulevard is not included. There also exists decorative up-lighting for the Gateway Towers in other areas near the southern Ranch Drive intersection of McCarthy.

2.2.2 MILPITAS ENTRY SIGN

1. City of Milpitas Entry Identification Sign along N. McCarthy Blvd., including walls, columns, lighting, and other appurtenances.

2.2.3 RANCH DRIVE

1. Commencing at a Northerly location where the right-of-way of Ranch Drive is contiguous with the right-of-way of Interstate 880, thence southerly, a strip of land approximately 10 feet in width measured from the east face of curb of Ranch Drive, from the northerly connection with Interstate 880 and Ranch Drive, southerly 630 feet, more or less, thence 405 feet south to the southerly end of Gateway location, varying in width from 10 feet to 132 feet, more or less.
2. Gateway Improvements, at the southerly connection of Ranch Drive and Interstate 880, including curved stone planter walls, gateway columns with entry sign appurtenant mounding ornamental plantings including flat work, trees and ground cover, irrigation systems; all as shown on landscape plans (Part A), except the Shopping Center's Monument Sign. As mentioned above, there also exists decorative up-lighting for the Gateway Towers in other areas near the southern Ranch Drive intersection of McCarthy.

2.3 Capital Improvements

In Fiscal Year 2021/22, the City initiated the design and construction of landscape and irrigation renovation on N. McCarthy Blvd. between State Route 237 and Dixon Landing Road and a portion of Ranch Drive. Landscape and irrigation renovation design and construction are scheduled to start in 2022.

2.4 Overhead

In addition to the hard costs of maintaining the improvements mentioned above, the City will incur costs for staff time and expenses related to the management and maintenance of the improvements within the District. Staff time includes oversight and coordination of both City and contractor provided services, annual tax roll preparation, and addressing property owner questions and concerns. These activities are directly related to the maintenance of the improvements, and without them the improvements could not be efficiently completed or properly maintained on an ongoing basis.

3. ESTIMATE OF COSTS

The estimated costs of maintenance and servicing of the improvements as described in the Plans and Specifications are summarized below.

3.1 District Budget

The Fiscal Year 2022/23 estimated cost budget for the maintenance and servicing of the improvements is as follows:

Description	Fiscal Year 2022/23 Budget
Maintenance Staff and Contract Services[1]	$270,000
Capital Equipment	0
Supplies	35,800
Utilities (Water, Electricity)	92,500
Reserve Fund	25,500
Capital Improvement Program	0
Maintenance Costs	**$423,800**
NBS	$4,350
City Staff District Administration	400
County Auditor-Controller Fee[2]	3,966
District Specific Costs	**$8,716**
Total District Costs	**$432,516**
General Benefit Contribution[3]	(21,360)
Operating Reserve Contribution	0
Net Amount to be Assessed	**$411,156**
Total District Square Footage[4]	11,792,520
Rate per Square Foot[5][6]	**$0.0349**
Maximum Rate Per Square Foot – 2022/23[7]	**$0.0516**

(1) *Fiscal 2022/23 Landscape Maintenance Contract Services includes Terracare and Irvine Company.*

(2) *County Auditor-Controller Fee is currently 1% of the total levy submittal.*

(3) *General Benefit Contribution is not applied to District Specific Costs as these are special benefits to the District.*

(4) *Total District Square Footage includes the 50% reduction for Parcel 5-7 (Sewer Main Pump Station) and Parcel 5-3C (Storm Pump Station).*

(5) *The Rate per Square Foot equals the Net Amount to be Assessed / Total District Square Footage.*

(6) *The assessed rate cannot exceed the maximum rate.*

(7) *The April 1, 2022 CPI was not available at the time of writing of this report. The Fiscal Year 2022/23 CPI increase was estimated by using the February 2022/23 CPI.*

3.1.1 OPERATING RESERVE

It is the intent of the City to maintain an operating reserve which shall not exceed the estimated costs of maintenance and servicing of the improvements prior to December 10 of the fiscal year, or when the City expects to receive its apportionment of special assessments from the County, whichever is later. The operating reserve balance information for the District is as follows:

Estimated Fiscal Year Ending 6/30/2022 Operating Reserve Cash Balance	$75,000
Operating Reserve Collection for Fiscal Year 2022/23	25,500
Estimated Fiscal Year Ending 6/30/2023 Operating Reserve Cash Balance	**$100,500**

3.1.2 CAPITAL IMPROVEMENT BUDGET

The City will begin the design and construction of landscape and irrigation renovation on N. McCarthy Blvd. between State Route 237 and Dixon Landing Road and a portion of Ranch Drive in 2022. As of December 31, 2021, the balance available for the Capital Improvement Project was $520,000. The City will utilize these funds to finance the project.

4. SPECIAL AND GENERAL BENEFIT

The improvements defined in Section 2 are expected to confer certain special benefits to parcels within the District. The special benefits are described in this section. Figures in this section are derived from a Special v. General Benefit Analysis performed in Fiscal Year 2020/21.

4.1 Identification of Benefit

Section 4 of Article XIIID of the California Constitution provides that once a local agency which proposes to impose assessments on property has identified those parcels that will have special benefits conferred upon them and upon which an assessment will be imposed, the local agency must next "separate the general benefits from the special benefits conferred," and only the special benefits can be included in the amount of the assessments imposed.

4.2 Special Benefits Identified

The improvements described in Section 2 are expected to confer certain special benefits to parcels within the District. The special benefits conferred to property within the District can be grouped into three primary benefit categories: aesthetic benefit, safety benefit, and economic benefit. The three District benefit categories are further expanded upon below.

- **Improved Aesthetics:** The aesthetic benefit relates to the increase in the overall aesthetics as a result of the ongoing maintenance, servicing, and operation of the improvements within the District. The landscaping improvements enhance the overall image and desirability of the properties within the District. Street landscaping improvements improve the livability, commercial activity, appearance, and desirability for properties within the District. Regular maintenance ensures that the improvements do not reach a state of deterioration or disrepair so as to be materially detrimental to properties adjacent to or in close proximity to the improvements. The overall appeal of the District is enhanced when improvements are in place and kept in a healthy and satisfactory condition. Conversely, appeal decreases when improvements are not well-maintained, unsafe, or destroyed by the elements or vandalism. Streetscapes have a significant effect on how people view and interact with their community.[1] With streetscapes that are safe and inviting, people are more likely to walk, which can help reduce automobile traffic, improve public health, stimulate local economic activity, and attract residents and visitors to the community.[2]
- **Increased Safety:** Well maintained areas mitigate crime, especially vandalism, and enhance pedestrian safety. A recent study found that after landscape improvements were installed, there was a 46% decrease in crash rates across urban arterial and highway sites and a second study reviewed found a 5% to 20% reduction in mid-block crashes after trees and planters in urban arterial roads were put in place. In addition, there is less graffiti, vandalism, and littering in outdoor spaces with natural landscapes than in comparable plant-less spaces. [3] The Victoria

[1] *Victoria Transport Policy Institute. (2011). Community Livability. Helping to Create Attractive, Safe, Cohesive Communities. Retrieved from http://www.vtpi.org/tdm/tdm97.htm.*
[2] *Ibid.*
[3] *Wolf, Kathleen L. (2010). Safe Streets – A Literature Review. In: Green Cities: Good Health (www.greenhealth.washington.edu).* College of the Environment, University of Washington.

Transport Policy Institute has found that streetscapes reduce traffic speeds and when combined with improved pedestrian crossing conditions can significantly reduce collisions. [4]

- **Economic Activity:** Well maintained street landscape improvements not only make adjacent properties appear more stable and prosperous but can spur investment in the property. The National Complete Streets Coalition notes that street design that is inclusive of all modes of transportation, where appropriate, not only improves conditions for existing businesses, but also is a proven method for revitalizing an area and attracting new development. [5] Landscaped sidewalks create an inviting place for customers to shop and do business. [6] Well-maintained and safe District areas will encourage an increase in the overall pedestrian activity. The area will become more pedestrian friendly, thus improving the retail environment by encouraging individuals to shop, dine, and stay within the District boundaries. The District will provide a cleaner more inviting environment to businesses and consumers which will attract, retain and expand the retail and business climate throughout. The effort will reduce vacancy rates and increase lease rates and utilization of property within the District.

4.3 General Benefits Identified

Section 4 of Article XIIID of the California Constitution provides that once a local agency which proposes to impose assessments on property has identified those parcels that will have special benefits conferred upon them and upon which an assessment will be imposed, the local agency must next "separate the general benefits from the special benefits conferred," and only the special benefits can be included in the amount of the assessments imposed.

General benefit is an overall and similar benefit to the public at large resulting from the maintenance of the District's improvements provided by the assessments levied. The improvements to be maintained by the District are located within the District boundaries only. There will be no District maintenance activities provided for improvements located outside of the District boundaries.

The ongoing maintenance of the District improvements will provide aesthetic, safety and economic activity benefits to the property within the District. However, it is recognized that the ongoing maintenance activities will also provide a level of benefit to some property within proximity to the District, as well as individuals passing through. Therefore, the general benefit created as a result of the District maintenance activities has been considered.

4.4 Quantification of Benefit

As a result of the maintenance and operation of the improvements, there will be a level of general benefit to people that do not work or intend to conduct business within the District. In order for property within the District to be assessed only for that portion of special benefits received from the District's maintenance

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[4] *Victoria Transport Policy Institute. (2011). Community Livability. Helping to Create Attractive, Safe, Cohesive Communities. Retrieved from http://www.vtpi.org/tdm/tdm97.htm.*

[5] *Pugliese, Philip. (2008). Complete Streets provide all the elements of multi-modal transportation. Retrieved from http://www.americantrails.org/resources/trans/completestreets08.html*

[6] *U.S Department of Transportation. Federal Highway Administration. (2001). Designing Sidewalks and Trails for Access, Part II of II: Best Practices Design Guide. Retrieved from http://www.fhwa. dot. gov/ environment/bicycle_pedestrian/publications/sidewalk2/*

activities, general benefits provided by the ongoing maintenance of the improvements needs to be quantified. The amount of general benefit that is provided from the District's maintenance activities cannot be funded via property owners' assessments.

Based upon the City's General Plan, the streets within the City are classified into one of the following categories: freeway, expressway, arterial, collector or local streets. The landscaping improvements are primarily located along N McCarthy Boulevard and Ranch Drive and situated within the public rights-of-way. The portion of the maintained landscaping that is located along N McCarthy Boulevard (classified as an arterial street) provides some general benefit to pass-through traffic.

Arterial streets are intended to provide a higher degree of mobility and generally serve longer vehicle trips. The landscape improvements within the District boundaries not only serve the parcels in the immediate vicinity, but persons who live outside of the District and are passing by. The City's most recent traffic study[7] completed in 2016 does not identify the percentage of traffic, which is pass-through traffic, but it does provide an estimated number of daily trips for N McCarthy Boulevard at the entrance of the District. However, the daily trip count estimate is lower than the trip count utilized in the 2015 findings report. This would not be expected with the increase in development to this area. Therefore, In the absence of a more recent reading of traffic along N. McCarthy Boulevard, the 2015 average number of daily trips of 35,050 per the General Plan has been utilized for the base trip count.

In order to account for the estimated increase in daily average trips as a result of the increased development, the City commissioned a traffic study for each new development. Per the traffic studies, it is estimated there will be an increase of 9,156 average daily trips. Adding this increase to the 35,050 previously identified above, the estimated number of average vehicles per day is 44,206 as shown below.

Street Name	Average Number of Vehicles per Day
N McCarthy Boulevard – between SR 237 and Ranch Drive	44,206

Before the determination and allocation of the percentage of special and general benefit for the District can be made, the estimated pass-through traffic must be computed. The pass-through trips are vehicles driving along the maintained streets for a portion of their trips, but not working, shopping or conducting business in the District or benefiting from the landscaping improvements in place.

Research consistently shows that developments with multiple land uses that make walking safe and convenient and are near other development, allow residents and workers to drive significantly less if they choose. While this District is not a mixed-use development, there are multiple land uses adjacent to one another. Therefore, treating this development area as though the uses were separated and accessible only by car would result in inflated trip counts in comparison to conventional, single-use developments.

In lieu of having a comprehensive traffic study that identifies the pass-through traffic, the estimated number of special benefit trips for each parcel has been determined using the average daily trips according

[7] *City of Milpitas. (2016 Traffic Study). Retrieved from City's Assistant Traffic Engineer*

to the ITE Trip Generation Report, 9th Edition[8] and the 2010 NCHRP Report 684 Enhancing Trip Capture Estimation for Mixed-use Developments[9].

Utilizing the ITE Trip Generation Report, each parcel within the District was assigned an average daily number of special benefit trips using the parcel's land use, building size or number of units. Further, to ensure the number of trips generated by the parcels has not been overstated, the percentage of total trips that are made internally within the development has been considered. Using the 2010 NCHRP Report 684 Enhancing Trip Capture Estimation for Mixed-Use Developments, the total special benefit trips have been reduced by approximately 31% (19,258 trips) to account for internal trips between the various businesses within the District. The total number of special benefit trips is therefore 42,864 as shown below.

[8] *Trip Generation, 9th Edition: An Informational Report of the Institute of Transportation Engineers. (2012) Washington, DC: Institute of Transportation Engineers.*

[9] *Bochner, Brian S., Hooper, Kevin, Sperry, Benjamin and Dunphy, Robert. National Cooperative Highway Research Program, Transportation Research Board of National Academies (2011). NCHRP Report 684 Enhancing Trip Capture Estimation for Mixed-Use Developments. Retrieved from onlinepubs.trb.org/onlinepubs/nchrp/nchrp_*rpt_*684*.pdf

Property Type	Combined Trip Generations
Retail (ITE Land Uses 815, 820, 869)	24,978.76
Office (ITE Land Uses 710, 714, 750)	15,832.41
Industrial/Warehousing (ITE Land Uses 140, 150, 151)	8,660.43
Fast-Food Restaurant w/ drive thru (ITE Land Use 934)	3,925.30
Gas Station (ITE Land Use 945)	3,758.16
Restaurant (ITE Land Uses 931, 932)	3,710.03
Hotel (ITE Land Use 310)	1,256.82
Total Trips	**62,121.92**
Internal Trip Reduction[1]	(19,257.79)
Total Adjusted Special Benefit Trips	**42,864.12**

(1) The internal trip rate percentage was calculated by using the NCHRP 684 Internal Rate Capture Estimation Tool.[10]

The total of all special benefit trips was removed from the average number of vehicles per day traveling within the District to estimate the number of pass-through trips daily.

Street Name	Average Number of Vehicles per Day	Less: Estimated Special Benefit Trips	Estimated Number of Pass Through Trips	Estimated % General Benefit
McCarthy Blvd.	44,206	42,864	1,342	3.04%

Based on the above calculations, the general benefit portion of the improved aesthetics, increased safety, and economic activity benefits resulting from the landscaping improvements is estimated to be 3.04%.

Pass-thru Vehicle General Benefit	3.04%

The commonly accepted distance people will walk for public transportation, goods and services is one-quarter mile.[11] However, based on the location of the District, and given that it is bounded by State Route 880 and 237, and Coyote Creek, there is not an efficient or practical means of walking into the District. Although unlikely, a person may decide to use the paths within the District, and as such the general benefit portion of the improved aesthetics, increased safety, and economic activity benefits resulting from the landscaping improvements is estimated to be 1.00%.

Pass-thru Walking General Benefit	1.00%

An estimated 1% of all US trips are made by bicycle[12]. Although the District is bounded by State Route 880 and 237, and Coyote Creek, there is a bike lane on N McCarthy Boulevard and a bike path along Coyote

[10] *Ibid.*
[11] *Walkscore. (2014). Walk Score Methodology. Retrieved from http://www.walkscore.com/methodology.shtml*
[12] *U.S Department of Transportation. Federal Highway Administration. (2011). Summary of Travel Trends: 2009 National Household Travel Survey. (Report No. FHWA-PL-11-022). Retrieved from http://nhts.ornl.gov*

Creek[13]. According to the National Household Travel Surveys, 49% of bike trips are for recreation, exercise, and sports[14]. As result of the District maintenance activities, there will be a level of general benefit to bicycle traffic that is not associated with property in the District. As such the general benefit portion of the improved aesthetics, increased safety, and economic activity benefits resulting from the landscaping improvements is estimated to be .50%, rounded up to 1.00%.

Pass-thru Biking General Benefit	1.00%

Collective District-Wide General Benefit

Since the District is comprised of improved aesthetics, safety, and economic activity benefits resulting from the collective landscaping improvements, the activity of both pedestrians and vehicles must be addressed in a collective form rather than independently. The sum of the calculated general benefits is the total general benefit related to vehicle, walking, and biking pass-thru traffic. This general benefit result is provided in the table below:

Pass-thru Vehicle General Benefit	3.04%
Pass-thru Walking General Benefit	1.00%
Pass-thru Biking General Benefit	1.00%
Total General Benefit	**5.04%**

The general benefit, which is the percentage of the total budget that must be funded through sources other than assessments, is 5.04%. The special benefit then, which is the percentage of the budget that may be funded by assessments, is 95.00%. **This general benefit percentage is in line with the level of general benefit determined by the assessment engineer at formation of the District (less than 10%).**

4.5 Special Benefit Trips

The detailed breakdown of the estimated special benefit trips for each parcel in the District is shown in the following table.

[13] *City of Milpitas. (2002). General Plan. Retrieved from http://www.ci.milpitas.ca.gov*

[14] Pucher, J., Buehler R., Meron, F., and Bauman, A. American Journals of Public Health, Supplement 1, Vol 101, No S1 (2011). Walking and Cycling in the United States, 2001-2009: Evidence from the National Household Travel Surveys. *Retrieved from http://www.ncbi.nlm.nih.gov/pubmed/21551387*

Assmt ID	Assessor's Parcel Number	Land Use Description	Acreage	Gross Leasable Area	Average Trip Rate[1]	Estimated # of Daily Special Benefit Trips[2]
1-1A-1	022-54-016	710 - General office	1.05	8,500	11.03	93.76
1-1A-2	022-54-017[(3)]	310 – Hotel	3.29	83,310	8.17	680.64
1-1A-3	022-54-018[(3)]	310 – Hotel	2.31	70,524	8.17	576.18
1-1A-4	022-54-019	934 - Fast Food	0.19	0.00	496.12	0.00
1-1B	022-54-008	934 - Fast Food	0.78	2,912	496.12	1,444.70
1-2	022-54-002	820 - Shopping Center	0.58	5,600	42.70	239.12
1-3	022-54-003	932 - High Vol. Restaurant	1.02	5,465	127.15	694.87
1-4A	022-54-009	869 - Home Superstore	8.47	86,250	20.00	1,725.00
1-4B	022-54-012	820 - Shopping Center	3.02	15,000	42.70	640.50
1-4C	022-54-013	820 - Shopping Center	0.23	10,000	42.70	427.00
1-4D	022-54-015	931 - Quality Restaurant	1.78	8,285	89.95	745.24
1-4E	022-54-014	932 - High Vol. Restaurant	0.64	3,710	127.15	471.73
1-4F	022-54-011	820 - Shopping Center	1.31	9,100	42.70	388.57
1-4G	022-54-010	931 - Quality Restaurant	1.03	7,476	89.95	672.47
2-1	022-53-001	931 - Quality Restaurant	0.75	6,500	89.95	584.68
2-2	022-53-002	820 - Shopping Center	1.23	15,020	42.70	641.35
2-3	022-53-003	820 - Shopping Center	0.76	12,000	42.70	512.40
2-4	022-53-004	934 - Fast Food	0.6	2,000	496.12	992.24
2-5	022-53-005	934 - Fast Food	0.74	3,000	496.12	1,488.36
2-6	022-53-006	820 – Shopping Center	1.19	51,250	45.04	2,308.30
2-7	022-53-007	820 - Shopping Center	21.92	187,134	42.70	7,990.62
3	022-29-016	815 - Discount Superstore	14.56	125,000	50.75	6,343.75
4-1A-1	022-56-005	714 - Corp Headquarters	2.04	115,753	7.98	923.71
4-1A-2	022-56-006	714 - Corp Headquarters	2.06	174,483	7.98	1,392.37
4-1A-3	022-56-007	714 - Corp Headquarters	2.07	174,483	7.98	1,392.37
4-1A-4	022-56-008	Undeveloped	34.52	-	-	-
4-1A-5	022-56-009	Parking Lot	24.32	-	-	-
4-1B	022-29-037	Undeveloped	6	-	-	-
5-1A-1	022-29-034	750 - Office Park	36.49	572,660	11.42	6,539.78
5-2A-1	022-29-035	750 - Office Park	31.31	480,772	11.42	5,490.42
5-3A-1	022-29-040	150 – Warehousing/710 General Office	15.55	313,978	8.87	2,784.67
5-3A-2	022-29-041	931 – Quality Restaurant	0.14	6,015	89.95	541.05
5-3A-3	022-29-042	150 – Warehousing/710 General Office	6.94	136,632	8.87	1,211.79
5-3A-4	022-29-043	150 – Warehousing/710 General Office	7.36	122,208	8.87	1,083.86
5-3A-5	022-29-044	140 - Manufacturing and 710 General Office	7.73	131,331	8.87	1,164.77
5-3B-1A	022-30-054	140 - Manufacturing and 710 General Office	5.63	99,576	8.87	883.14
5-3B-2	022-30-038	Undeveloped	10	-	-	-
5-3B-3	022-30-039	Undeveloped	5	-	-	-
5-3C	022-30-035[4]	Pump Station	0.19	-	-	1.00
5-5A-1	022-30-055	815 - Discount Superstore	5.6	74,131	50.75	3,762.15
5-5A-2	022-30-056	915 – Gasoline/Service Station	0.59	3,182	1,181.07	3,758.16
5-5A-3	022-30-057	151 – Mini-Warehouse	3.15	114,707	13.34	1,530.19
5-6	022-30-041	Open Space	0	-	-	-
5-7	022-30-049[4]	Sewer Pump Station	9.12	8,500	11.03	1.00

Total Estimated Daily Special Benefit Trips	62,121.92
Internal Trip Reduction[5]	(19,257.79)
Total Special Benefit Trips	**42,864.12**

(1) Average Trip Rate per Day is from the Institute of Traffic Engineer's, Trip Generation Report. [15]
(2) Average Number of Special Benefit Trips per Day is the Average Trip Rate times each 1,000 square feet of gross leasable area.
(3) Average Number of Special Benefit Trips per Day is the Average Trip Rate times number of hotel rooms for this parcel.
(4) Pump Station trips are an estimate.
(5) The internal trip rate percentage was calculated by using the NCHRP 684 Internal Rate Capture Estimation Tool. [16]

[15] *Trip Generation, 9th Edition: An Informational Report of the Institute of Transportation Engineers. (2012) Washington, DC: Institute of Transportation Engineers.*

[16] *Bochner, Brian S., Hooper, Kevin, Sperry, Benjamin and Dunphy, Robert. National Cooperative Highway Research Program, Transportation Research Board of National Academies (2011). NCHRP Report 684 Enhancing Trip Capture Estimation for Mixed-Use Developments. Retrieved from* onlinepubs.trb.org/onlinepubs/*nchrp/nchrp*_rpt_*684*.pdf

5. METHOD OF ASSESSMENT

5.1 Introduction

The special benefits that accrue to the properties in the District are limited to those properties that abut an improved public street or which have been obligated by issuance of bonds for necessary public improvements (the "Benefited Parcels"). Other properties in the District receive only a general benefit from the work of the improvements, and there is also some general benefit that accrues to the community as a whole. As outlined in Section 4, the total amount of general benefit from the improvements is determined to be 5.04%.

The Benefited Parcels receive a special benefit proportionate to their net acreage and thus they are assessed on the basis of total net acreage for all costs associated with the maintenance and installation of the District's improvements, with the following exceptions:

- Of the 9.12 acres of parcel 022-30-049 (sewer pump station), 5.51 acres is the pump station and is not assessable. The remaining 3.61 acres does not benefit from landscaping as much as other Benefited Parcels because it is dedicated to municipal sanitary sewer and storm facilities use and will not otherwise be developed. Therefore, it is assigned a special benefit equal to 50% of other Benefited Parcels.
- Parcel 022-30-035 (storm pump station) does not benefit from landscaping as much as other Benefited Parcels because it is dedicated to municipal sanitary sewer and storm facilities use and will not otherwise be developed. Therefore, it is assigned a special benefit equal to 50% of other Benefited Parcels.
- Parcel 022-29-037 and parcel 022-30-041 are dedicated to open space and therefore do not receive special benefit from the maintenance and improvements.

5.2 Method of Assessment Spread

The amount of assessment levied on each Benefited Parcel in the District, for Fiscal Year 2022/23, is $0.0349 per square foot. The assessment rate was determined by taking the Fiscal Year 2022/23 Net Amount to be assessed ($411,156) divided by the total net square footage of the District (11,792,520 sq. ft.).

The maximum assessment rate for Fiscal Year 2022/23 is approximately $0.0516, which is a preliminary number. Each year the maximum assessment rate per square foot is increased by the percentage change from April 1st of the prior year to April 1st of the current year in the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Indexes, Pacific Cities and U.S. City Average, San Francisco-Oakland-Hayward. The April 1, 2022 CPI was not available at the time of writing of this report. For purposes of this report, the CPI increase was estimated by using the February 2022/23 CPI.

5.3 Maximum Assessment Rates

The following table provides the historical maximum assessment rate for Fiscal Year 2001/02 through the current fiscal year:

Fiscal Year	CPI	Percentage Increase[1]	Assessment Rate Range[2]	
2001/02	189.1	N/A	$0.0120	$0.0300
2002/03	193.0	2.06%	0.0122	0.0306
2003/04	197.3	2.23%	0.0125	0.0313
2004/05	198.3	0.51%	0.0126	0.0315
2005/06	202.5	2.12%	0.0129	0.0321
2006/07	208.9	3.16%	0.0133	0.0331
2007/08	215.842	3.32%	0.0137	0.0342
2008/09	222.074	2.89%	0.0141	0.0352
2009/10	223.854	0.80%	0.0142	0.0355
2010/11	227.697	1.72%	0.0144	0.0361
2011/12	234.121	2.82%	0.0149	0.0371
2012/13	238.985	2.08%	0.0152	0.0379
2013/14	244.675	2.38%	0.0155	0.0388
2014/15	251.495	2.79%	0.0160	0.0399
2015/16	257.622	2.44%	0.0163	0.0409
2016/17	264.565	2.70%	0.0168	0.0420
2017/18	274.589	3.79%	0.0174	0.0436
2018/19	283.422	3.22%	0.0180	0.0450
2019/20	294.801	4.01%	0.0187	0.0468
2020/21	298.074	1.11%	0.0189	0.0473
2021/22	309.419	3.81%	0.0196	0.0491
2022/23	320.162	5.19%[3]	0.0207	0.0516

(1) *Percentage increase from April 1 of the prior year to April 1 of the current year in the US Department of Labor, Bureau of Labor Statistics, Consumer Price Indexes, Pacific Cities and US City Average, San Francisco-Oakland-Hayward.*

(2) *The left and right column indicate the minimum and maximum assessment rate, respectively.*

(3) *The April 1, 2022 CPI was not available at the time of writing of this report. The Fiscal Year 2022/23 CPI increase was estimated using the February 2022/23 CPI.*

5.4 Appeals

Any property owner who feels that the amount of their assessment is in error as a result of incorrect information being used to apply the foregoing method of spread may file an appeal with the Finance Director of the City. Any such appeal is limited to the correction of an assessment during the current or, if before July 1, the upcoming fiscal year. Upon the filing of any such appeal, the Finance Director shall promptly review the information provided by the property owner and if he/she finds that the assessment should be modified, he/she shall have the authority to make the appropriate changes in the assessment roll. If any such changes are provided after the assessment roll has been filed with the County for collection, the Finance Director is authorized to refund to the property owner the amount of any approved reduction.

6. ASSESSMENT DIAGRAM

The following page provides a copy of the assessment diagram of the District.

An assessment was levied by the City Council of the City of Milpitas, County of Santa Clara, State of California on the lots, pieces and parcels of land shown on this assessment diagram. Said assessment was levied on the 3rd day of June 2014 ; said assessment diagram and the assessment roll were recorded in the Office of the Superintendent of Streets of said City on the 3rd day of June 2014. Reference is made to the assessment roll recorded in the Office of the Superintendent of Streets for the exact amount of each assessment levied against each parcel of land shown on this assessment diagram.

Mary Lavelle
City Clerk of the City of Milpitas

Filed in the Office of the City Clerk of the City of Milpitas, County of Santa Clara, State of California this 20th day of May 2014.

Mary Lavelle
City Clerk of the City of Milpitas

Recorded in the Office of the Superintendent of Streets of the City of Milpitas, County of Santa Clara, State of California, this 3rd day of June 2014.

Superintendent of Streets
City of Milpitas

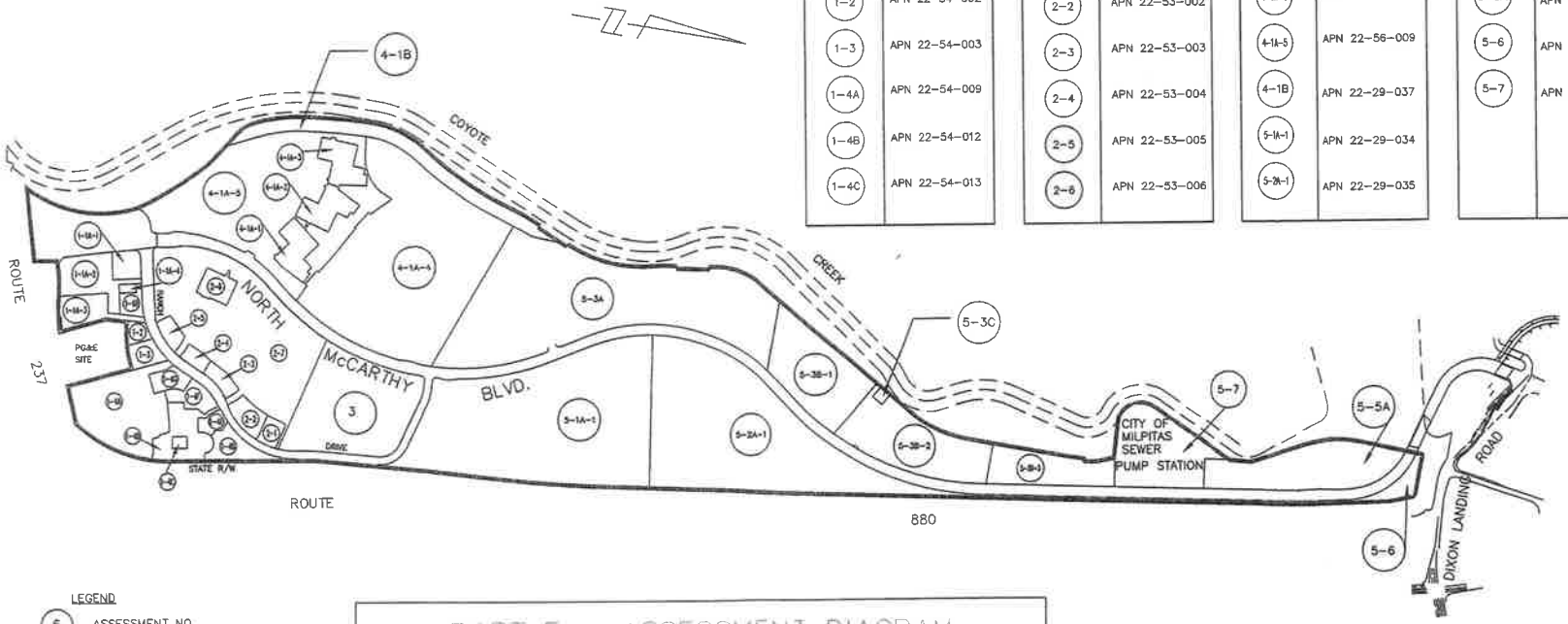
Figure 1

ASSESSMENT NO.	ASSESSOR'S PARCEL NO.
1-1A-1	APN 22-54-016
1-1A-2	APN 22-54-017
1-1A-3	APN 22-54-018
1-1A-4	APN 22-54-019
1-1B	APN 22-54-008
1-2	APN 22-54-002
1-3	APN 22-54-003
1-4A	APN 22-54-009
1-4B	APN 22-54-012
1-4C	APN 22-54-013

ASSESSMENT NO.	ASSESSOR'S PARCEL NO.
1-4D	APN 22-54-015
1-4E	APN 22-54-014
1-4F	APN 22-54-011
1-4G	APN 22-54-010
2-1	APN 22-53-001
2-2	APN 22-53-002
2-3	APN 22-53-003
2-4	APN 22-53-004
2-5	APN 22-53-005
2-6	APN 22-53-006

ASSESSMENT NO.	ASSESSOR'S PARCEL NO.
2-7	APN 22-53-007
3	APN 22-29-016
4-1A-1	APN 22-56-005
4-1A-2	APN 22-56-006
4-1A-3	APN 22-56-007
4-1A-4	APN 22-56-008
4-1A-5	APN 22-56-009
4-1B	APN 22-29-037
5-1A-1	APN 22-29-034
5-2A-1	APN 22-29-035

ASSESSMENT NO.	ASSESSOR'S PARCEL NO.
5-3A	APN 22-29-036
5-3B-1	APN 22-30-037
5-3B-2	APN 22-30-038
5-3B-3	APN 22-30-039
5-3C	APN 22-30-035
5-5A	APN 22-30-048
5-6	APN 22-30-041
5-7	APN 22-30-049



LEGEND

6 ASSESSMENT NO.

BOUNDARY DISTRICT

ASSESSMENT LIMIT

PART F - ASSESSMENT DIAGRAM

LANDSCAPING & LIGHTING & MAINTENANCE ASSESSMENT DISTRICT NO. 95-1

OF

CITY OF MILPITAS

COUNTY OF SANTA CLARA - STATE OF CALIFORNIA

Note:
Reference is hereby made to the maps and deeds of record in the Office of the Assessorof the County of Santa Clara for a detailed description of the lines and dimensions of anyparcels shown hereon. Those maps shall govern for all details concerning the lines anddimension of such parcels. Each parcel is identified in said maps by its distinctive Assessors Parcel Number.

1/1

7. ASSESSMENT ROLL

Assessor's parcel identification, for each lot or parcel within the District, shall be based on the Santa Clara County Assessor's secured roll data for the applicable year in which this report is prepared and is incorporated herein by reference.

A listing of assessor's parcels assessed within the District for Fiscal Year 2022/23, along with the assessment amounts, is on file in the office of the City Clerk and incorporated herein by reference. Based on County Assessor's secured roll data, current assessor's parcels, including corrected and/or new assessor's parcels, will be submitted and/or resubmitted to the Santa Clara County Auditor/Controller. The annual assessment amount to be levied and collected for the resubmitted parcel(s) shall be determined in accordance with the method of apportionment and assessment rate approved in this report. Therefore, if a single assessor's parcel has a status change in development, other land use change, or subdivides into multiple assessor's parcels, the assessment amounts applied to each of the new assessor's parcels shall be recalculated and applied according to the approved method of apportionment and assessment rate rather than a proportionate share of the original assessment amount.

City of Milpitas

LLMAD No. 95-1

Final Billing Detail Report for Fiscal Year 2022/23

APN	Situs Address	Net Square Foot	Fiscal Year 2022/23 Levy
022-29-016	301 RANCH DR	634,234	$22,113.10
022-29-034	430 N MCCARTHY BLVD	1,589,504	55,419.46
022-29-035	820 N MCCARTHY BLVD	1,363,864	47,552.28
022-29-040	407 N N MCCARTHY BLVD	677,532	23,622.74
022-29-041	507 N N MCCARTHY BLVD	43,691	1,523.30
022-29-042	607 N N MCCARTHY BLVD	302,350	10,541.68
022-29-043	707 N MCCARTHY BLVD	320,732	11,182.60
022-29-044	807 N MCCARTHY BLVD	336,545	11,733.92
022-30-035		4,138	144.28
022-30-038		435,600	15,187.56
022-30-039	1207 N MC CARTHY BLVD	217,800	7,593.78
022-30-049		78,626	2,741.36
022-30-054	907 N MCCARTHY BLVD	245,330	8,553.64
022-30-055	1645 N MCCARTHY BLVD	243,936	8,505.04
022-30-056	1605 N MCCARTHY BLVD	25,875	902.14
022-30-057	1585 N MCCARTHY BLVD	137,040	4,778.00
022-53-001	275 RANCH DR	32,670	1,139.06
022-53-002	179 RANCH DR	53,579	1,868.06
022-53-003	125 RANCH DR	33,106	1,154.26
022-53-004	81 RANCH DR	26,136	911.24
022-53-005	41 RANCH DR	32,234	1,123.88
022-53-006	63 RANCH DR	51,836	1,807.32
022-53-007	11 RANCH DR	954,835	33,291.16
022-54-002	74 RANCH DR	25,265	880.88
022-54-003	84 RANCH AVE	44,431	1,549.12
022-54-008	50 RANCH DR	33,977	1,184.62
022-54-009	120 RANCH DR	368,953	12,863.88
022-54-010	110 RANCH DR	44,867	1,564.32
022-54-011	170 RANCH DR	57,064	1,989.56
022-54-012	200 RANCH DR	131,551	4,586.64
022-54-013	212 RANCH DR	10,019	349.30
022-54-014	190 RANCH DR	27,878	972.00
022-54-015	260 RANCH DR	77,537	2,703.38
022-54-016	12 RANCH DR	46,174	1,609.88
022-54-017	30 RANCH RD	143,312	4,996.70
022-54-018	40 RANCH DR	100,624	3,508.32
022-54-019		8,276	288.56
022-56-005	115 N MCCARTHY BLVD	88,427	3,083.08
022-56-006	135 N MCCARTHY BLVD	89,734	3,128.64
022-56-007	155 N MCCARTHY BLVD	90,169	3,143.82
022-56-010	205 N MCCARTHY BLVD	1,488,719	51,905.48
022-56-011		1,074,352	37,458.20

Slight variances may occur due to rounding

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City of Milpitas

LLMAD No. 95-1

Final Billing Detail Report for Fiscal Year 2022/23

APN	Situs Address	Net Square Foot	Fiscal Year 2022/23 Levy
42 Accounts		**11,792,520**	**$411,156.24**
42 Total Accounts		**11,792,520**	**$411,156.24**

Slight variances may occur due to rounding

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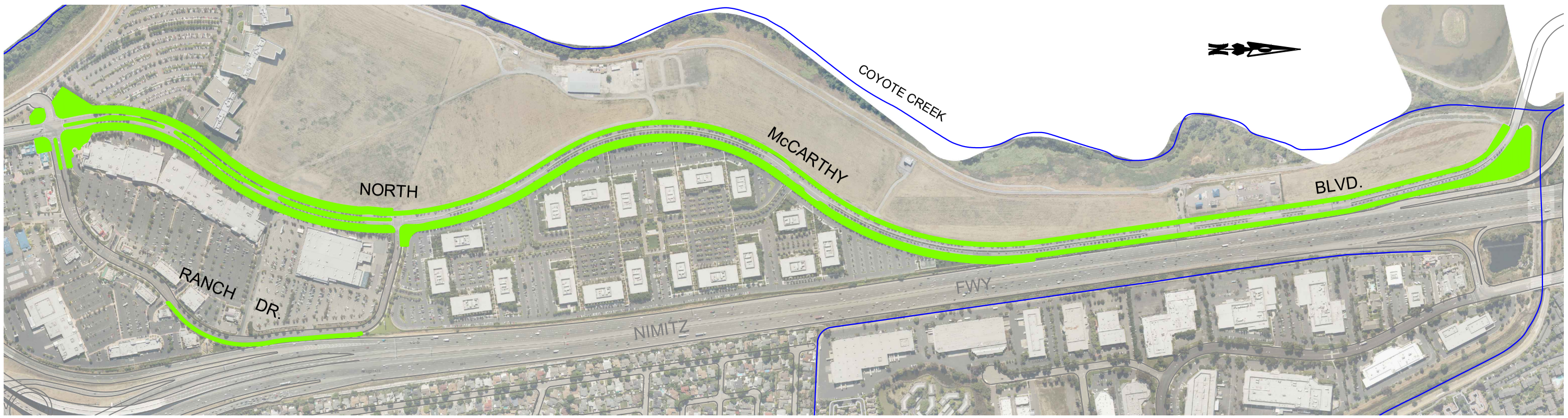
CITY OF MILPITAS

LANDSCAPING MAINTENANCE DISTRICT (LMD) 95-1

(N.T.S.)



2022-2023 FISCAL YEAR LANDSCAPE AREA FUNDED FOR MAINTENANCE

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Receive a Follow-up Presentation from Staff and provide Direction on Policy Options and Cost Estimates to Establish a Local Tobacco Retail Permitting (TRP) Program and to Regulate Tobacco Retail Locations and the Sale of Flavored Tobacco and Electronic Cigarette Products in Milpitas (Staff Contacts: Ned Thomas, Planning Director, 408-586-3273; Jay Lee, Principal Planner, 408-586-3077)**
Category:	Community Development
Meeting Date:	6/21/2022
	Recommendation: (1) Receive a presentation from staff; and (2) Provide feedback and direction on policy options and cost estimates to establish a local tobacco retail permitting program and to regulate Tobacco Retail Locations and the Sale of flavored tobacco and electronic cigarette products in Milpitas.

Background:

Tobacco use remains the number one preventable cause of death and disease in California, causing nearly 40,000 deaths in California every year. In Santa Clara County, one in eight deaths annually is attributed to smoking-related illness or disease, such as cancer, heart disease, and respiratory diseases. In addition, the widespread use of e-cigarettes by youth has significant long-term public health consequences. Data from the 2019-20 California Youth Tobacco Survey shows that almost one in four students in Santa Clara County have tried vaping. In Santa Clara County, 93.1% of teens currently using tobacco reported using a flavored product and 80% of youth who have ever used tobacco started with a flavored product. Data from the 2019 National Youth Tobacco Survey shows that e-cigarette use in the U.S. more than doubled among high school students (from 11.7% to 27.5%) and tripled among middle school students (from 3.3% to 10.5%) from 2017 to 2019.

Although the City of Milpitas has adopted local ordinances to prohibit smoking in multi-family residential buildings, public parks, and other locations, it does not currently regulate the size and location of tobacco retailers, require a local tobacco retailer permit, or prohibit the sale of flavored tobacco or electronic cigarette products. In collaboration with the Santa Clara County Department of Public Health, many local jurisdictions across the Bay Area have established local tobacco permitting programs to address these issues.

On October 5, 2021, the Council received an initial presentation from staff regarding policy options for establishing a local tobacco retail permit (TRP) program and regulating tobacco retail locations and the sale of flavored tobacco and electronic cigarette products. Attachment 1 is a copy of the Council Agenda Report from October 5, 2021. At that time, staff recommended that the City of Milpitas enter into a service agreement with the County of Santa Clara to administer the local TRP program and implement regional strategies to prevent youth use of flavored tobacco and vaping products in the city. The Council directed staff to explore options and estimated costs for a TRP program to be set up and administered locally by the City of Milpitas.

The follow-up discussion on June 21st will provide the Council with the requested information, including a cost comparison with the existing TRP program offered to local jurisdictions by the Santa Clara County Public Health Department (PHD). Based on this information, the Council will give final direction to staff on establishing a TRP program and prohibiting the sale of flavored tobacco and electronic cigarette products.

Analysis:

Federal and State Tobacco Laws

Federal law prohibits the sale of candy and fruit-flavored cigarettes but does not prohibit the sale of menthol cigarettes or flavored, non-cigarette products, such as cigars, little cigars, smokeless tobacco, hookah tobacco, electronic smoking devices (i.e., vaping), and the e-liquid used in these devices. The U.S. Food and Drug Administration (FDA) recently announced plans to ban menthol cigarettes and all flavored cigars in the United States. Agency officials say this ban could help prevent some of the roughly 500,000 U.S. deaths linked to tobacco each year. However, these regulations have not yet been drafted, and the proposed changes will take several years to adopt and implement.

California law (SB793) adopted on August 23, 2020, prohibits the sale of most flavored tobacco products but provides three exemptions:

1. Hookah and shisha products (if sold by an adult-only hookah tobacco retailer);
2. Premium cigars with a wholesale price of no less than $12; and
3. Loose leaf tobacco (other than tobacco for roll-your-own-cigarettes).

The California law was scheduled to take effect on January 1, 2021, but opponents gathered signatures and have submitted a proposed referendum to overturn the law. The State law is suspended until the referendum, which is currently scheduled for November 2022, is held. If the voters uphold SB 793, the law will become effective immediately. However, a lawsuit filed by tobacco companies challenging the State law could delay implementation even further.

County Recommendations

Because of the uncertainty around implementation of the State law, the Santa Clara County PHD recommends that local jurisdictions continue to adopt local ordinances to regulate the size and location of tobacco retailers, prohibit the sale of flavored tobacco products, and remove the exemptions provided in State law. Specifically, the Santa Clara County PHD recommends the following policies to reduce youth access to tobacco products:

- Require a local permit to sell tobacco products;
- Prohibit the sale of flavored tobacco products, including menthol cigarettes;
- Prohibit the sale of all electronic smoking devices (e-cigarettes) and vaping products;
- Require that new tobacco retailers are located a minimum distance from schools (e.g., 1,000 feet);
- Require that new tobacco retailers are located a minimum distance from existing tobacco retailers (e.g., 500 feet); and
- Prohibit tobacco sales in pharmacies.

The above policies are already in force in the unincorporated areas of Santa Clara County, and public health officials believe that these measures are likely to have the greatest impact on reducing youth access to tobacco products. Attachment 2 is a table of cities in Santa Clara County that have established TRP programs to regulate retail sales of tobacco products. Recommended policy elements for these programs include:

- Require retailers to post a notice stating that the sale of tobacco products to anyone under 21 years of age is illegal and subject to penalties.
- Require retailers to check the identification for any purchaser who appears to be under 30 years of age.
- Prohibit the sale of tobacco products from a vending machine.
- Prohibit retailers from covering more than 15% of windows and clear doors with any type of ads or signs.
- Prohibit mobile tobacco retailing or tobacco retailing at a temporary event.

Local TRP Program by City of Milpitas

If the City Council chooses to implement a new local TRP program, the City will bear all costs of setting up, administering, and enforcing the new program. Administration and enforcement will require hiring additional staff to develop and review applications, establish administrative systems and protocols, train staff and retailers, design and print educational materials, maintain data and records, and perform other administrative tasks. The TRP program will also require establishing new enforcement mechanisms for tobacco-related laws, including regular compliance checks by code enforcement staff and undercover operations conducted by the Milpitas Police Department. Generally, TRP enforcement involves a series of graduated penalties, such as increased fees and eventually the suspension of a license, on retailers who violate tobacco laws. Common infractions include selling tobacco to individuals under 21 years of age or selling prohibited products.

Application Fees, Staffing, and Annual Staffing Costs

Application fees for a new local TRP program administered solely by City staff are estimated to be $1,100 per retail location for the initial application and $550 for each annual renewal. In comparison to nearby jurisdictions, the City of Milpitas fees are higher and are intended to recover the cost of staff time on each application. These fee amounts are calculated using the Full-Time Equivalent (FTE) wages of staff and an estimate of the required time necessary for staff to review and maintain all associated records for individual applications. It is important to note that the processing costs for each application will still not result in full cost recovery of the program itself.

Based on similar programs in other communities, staff estimates that set up, administration, and enforcement of a new local TRP program would require hiring or re-assigning City staff from various departments (up to two FTEs) to effectively manage the program. Significant time and attention will be required to set up the application process, establish clear and consistent procedures and protocols, train staff, educate retailers and the public, maintain records on a regular basis, conduct spot checks and undercover operations, prepare and serve violation notices, and pursuing legal actions as necessary.

The costs associated with hiring new staff or reassigning existing staff is a function of salary level and the amount of time spent working on all tasks associated with the program over an annual period.

1. One (1) Code Enforcement Officer (part-time) to review applications, maintain records, conduct compliance checks and inspections, and enforce penalties. $65,381 (0.5 FTE)

2. One (1) Police Officer (part-time) to conduct enforcement operations including background checks, spot checks and undercover operations at individual retail locations. $100,000 (0.5 FTE)

3. One (1) Recreation and Community Services staff member (part-time) to conduct mandatory retailer education and facilitate alternative penalties (e.g., working with parents and educators to apply alternative penalties for minors, training and coordinating with community health workers and social workers, etc.). $33,387 (0.5 FTE)

4. One (1) Planning staff member (part-time) to prepare and update application materials, respond to inquiries from business owners and the public, update online information and forms, and coordinate intake and circulation of applications, etc. $74,208 (0.5 FTE)

The annual costs associated with hiring or re-assigning City staff from various departments (up to two FTEs) will result in a minimum annual on-going cost of approximately $272,976. It is expected that new staff hired to help set up, administer, and enforce a new local TRP program in Milpitas will also fulfil other duties within their respective departments in addition to the specific duties associated with the TRP program.

At present, approximately 40 tobacco retail establishments (e.g., grocery stores, convenience stores, and gas stations) in the City of Milpitas, so the estimated application fee of $1,100 and annual renewal fee of $550 would not generate sufficient revenue to cover the annual costs of administering and enforcing a local TRP program. Any deficit in program costs would need to be budgeted from the City's General Fund.

Local TRP Program in Partnership with Santa Clara County
If the City Council wishes to avoid the fiscal impact of establishing, administering, and enforcing a local TRP program, it could adopt an ordinance that addresses all of recommendations from the County PHD outlined in the analysis section above. The Milpitas program would regulate the location of local tobacco retailers and prohibit the sale of flavored tobacco and electronic cigarette products. Specific regulations would address tobacco products marketed to youth. For this option, there would be no fiscal impact to the City because all administration and enforcement would be conducted and funded by the County Department of Environmental Health (DEH). In this way, the City's TRP ordinance would establish local regulations tailored to the needs of Milpitas residents and businesses without the cost burden of hiring additional staff and duplicating a program that already exists at the County level.

The estimated fee for a local Milpitas TRP program administered in partnership with Santa Clara County is $725 per retail location for the initial application and $425 for each annual renewal. These fees reflect the County's costs per retailer for each application and permit renewal. As noted above, there would be no fiscal impact to the City because program administration and enforcement the program is already set up and administration and enforcement would be conducted entirely by the County Department of Environmental Health (DEH).

To qualify for a partnership with Santa Clara County to administer and enforce a local TRP program, the City Council would simply need to adopt a Tobacco Retail Ordinance that includes the elements outlined under the "County Recommendations" section of this report. Attachment 3 provides additional details for each element. Attachment 4 provides examples of local TRP programs administered by Santa Clara County DPH in partnership with the City of Cupertino, the City of Palo Alto and the Town of Los Gatos, respectively.

Public Engagement
The Planning Department conducted an online community survey from July 15 to August 31, 2020 to gather feedback from the community about tobacco-related policies and policies to regulate tobacco retailers. Attachment 5 is a summary of responses from the survey.

The survey showed that 69% of respondents believe flavored tobacco products appeal to youth over unflavored tobacco products, and nearly 40% of respondents believe it is easy for youth under the age of 21 to purchase flavored tobacco products in Milpitas. A majority of respondents were in favor of the proposed policies. 84% of respondents would support a law prohibiting the sale of flavored tobacco products in Milpitas, and there is strong support for regulations prohibiting stores from selling tobacco products near schools and existing tobacco retailers. Of particular note, 86% of respondents would also support a law requiring store owners to purchase a local license to sell tobacco.

Next Steps
Based on direction from the City Council, staff will prepare a draft Tobacco Retail Ordinance and implementation plan for review and adoption by the Council in Fall/Winter 2022.

Policy Alternatives:
Alternative: The Council may provide direction to staff to not prepare a Tobacco Retail Ordinance.

Pros: Staff would be able to focus on other pending work items.

Cons: The City would not have a mechanism for regulating tobacco retailers. A TRP program would allow the City to establish a structure to monitor and enforce tobacco laws, encourage responsible tobacco retailing, and to discourage violation of laws related to tobacco products.

Reason not recommended: Policies to regulate tobacco retailers would reduce youth access to tobacco products, including vaping, and demonstrate the City's commitment to protecting the health, safety, and welfare of its residents.

Fiscal Impact:

Local TRP Option: If the City Council chooses to adopt an ordinance to create a new local TRP program to be administered solely by the City, fiscal impacts to the City will include the hiring or re-assignment of staff members from various departments, including Code Enforcement, Police, Recreation and Community Services, and Planning. The additional cost of up to two (2) FTEs would be approximately $272,976, annually. These staff members would be responsible for program set-up as well as on-going administration and enforcement.

Although the City would collect an estimated initial application fee of $1,100 and an annual renewal fee of $550, the TRP program will not generate sufficient revenue to cover the total annual costs of administering and enforcing a local TRP program. Based on the current number of retailers, approximately $250,000 would need to be budgeted from the City's General Fund.

County Partnership Option: If the City Council chooses to adopt an ordinance that establishes a local TRP program in partnership with Santa Clara County (i.e. the TRP program follows County PHD recommendations), the County would administer and enforce the program. Fiscal impacts to the City would be minimal to none as all the costs for implementation, administration, and enforcement would be fully funded by the County.

Environmental Review:

The proposed Ordinance is not a project under the requirements of the California Environmental Quality Act (CEQA) and the CEQA Guidelines because it has no potential for resulting in either a direct or reasonably foreseeable indirect change in the environment. On a separate and independent basis, the action being considered is exempt from environmental review in accordance with CEQA Guidelines Section 15061(b)(3) (Common Sense Exemption). The Ordinance, which would regulate current tobacco retailers and prohibit new tobacco retailers in certain locations, would have no significant impact on the environment.

Attachments:

1. Council Agenda Report regarding Tobacco Retailer Permit Program dated October 5, 2021
2. Local Jurisdictions in Santa Clara County with Regulations Limiting Access to Tobacco Products
3. Elements of a local Tobacco Retailer Permit Program Consistent with County Recommendations
4. Examples of TRP programs administered by SC PHD for other local jurisdictions
5. Milpitas Community Survey Results regarding Tobacco Use

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Receive a presentation from staff and provide direction on Policy Options to Regulate Tobacco Retail Permitting, Flavored Tobacco and Electronic Cigarette Products, and Tobacco Retail Location Limits**
Category:	Community Development
Meeting Date:	10/5/2021
Staff Contact:	**Ned Thomas, Planning Director, 408-586-3273** **Jay Lee, Principal Planner, 408-586-3077**
Recommendation:	1. Receive a presentation from staff 2. Provide feedback and direction on tobacco retail permitting, flavored tobacco and electronic cigarette products, and tobacco retail location limits

Background:

Tobacco use remains the number one preventable cause of death and disease in California, causing nearly 40,000 deaths in California every year. In Santa Clara County, one in eight deaths annually is attributed to smoking-related illness or disease, such as cancer, heart disease, and respiratory diseases.

Data from the 2019-20 California Youth Tobacco Survey shows that almost one in four students in Santa Clara County have tried vaping. In Santa Clara County, 93.1% of teens currently using tobacco reported using a flavored product and 80% of youth who have ever used tobacco started with a flavored product. Data from the 2019 National Youth Tobacco Survey shows that e-cigarette use in the U.S. more than doubled among high school students (from 11.7% to 27.5%) and tripled among middle school students (from 3.3% to 10.5%) from 2017 to 2019. The widespread use of e-cigarettes by youth has significant long-term public health consequences. Most e-cigarettes contain nicotine, which, according to the Centers for Disease Control and Prevention (CDC), is highly addictive, can harm adolescent brain development, and can interfere with memory and attention processing. The CDC warns that young people who vape may be more likely to start smoking traditional cigarettes.

The Santa Clara County's Healthy Cities Program seeks to address these tobacco-related health concerns by promoting policies and practices to provide tobacco-free and smoke-free communities. Santa Clara County's Public Health Department has provided funding to cities to support tobacco prevention strategies. Following Council request to explore policies to discourage tobacco use and vaping by teens, on July 20, 2020, the City executed a grant agreement in the amount of $37,560 with the Santa Clara County Public Health Department (PHD) to explore tobacco prevention policies that have been shown to reduce youth access and exposure to tobacco products. On March 16, 2021, Council confirmed the scope of work and directed staff to execute a service agreement with Santa Clara County to commence the work.

The City of Milpitas had previously adopted ordinances to prohibit smoking in parks and trails in 2012 and outdoor dining areas in 2017. In June 2021, the City adopted an ordinance to prohibit smoking in multi-unit residences and many outdoor areas to reduce exposure to secondhand smoke. However, the City currently does not prohibit the sale of flavored tobacco products or require a local tobacco retailer permit. Therefore, City staff is now shifting its focus to conducting community outreach to educate youth, teens, and parents about the health hazards of smoking and developing policies to better regulate tobacco retailers. See Attachment 2, Tobacco Free Communities Policies in Santa Clara County, for a table of smoke-free policies within Milpitas and other cities in the County.

State and Federal Laws
Although federal law prohibits the sale of candy and fruit-flavored cigarettes, the law does not prohibit the sale of menthol cigarettes or flavored, non-cigarette tobacco products, such as cigars, little cigars, smokeless tobacco, hookah tobacco, electronic smoking devices, and the e-liquid used in these devices. The FDA has announced plans to prohibit the sale of menthol in cigarettes and cigars; however, the regulations have not yet been drafted.

On August 28, 2020, California passed a law prohibiting the sale of most flavored tobacco products (SB 793). The state law contains three exemptions:

1. Hookah and shisha products (if sold by an adult-only hookah tobacco retailer);
2. Premium cigars with a wholesale price of no less than $12; and
3. Loose leaf tobacco (other than tobacco for roll-your-own-cigarettes).

The California law was scheduled to take effect on January 1, 2021. However, opponents of the law submitted a proposed referendum to overturn the law. The State law is suspended until the referendum vote, which is currently scheduled for November 2022. If voters vote to uphold SB 793, the law should become effective immediately as the law is currently suspended, and the law's effective date was January 1, 2021. However, a lawsuit filed by tobacco companies challenging the state law may delay implementation even further. Because of the uncertainty around implementation of the State law, the Santa County PHD recommends that local governments continue to adopt laws to prohibit the sale of flavored tobacco products to remove the exemptions provided in State law.

Analysis:
The Santa Clara County PHD recommends the following policies to reduce youth access to tobacco products:

- Require a local permit to sell tobacco products;
- Prohibit the sale of flavored tobacco products, including menthol cigarettes;
- Prohibit the sale of all electronic smoking devices (e-cigarettes) and vaping products;
- Require that new tobacco retailers are located a minimum distance from schools (e.g., 1,000 feet);
  Require that new tobacco retailers are located a minimum distance from existing tobacco retailers (e.g., 500 feet); and
- Prohibit tobacco sales in pharmacies.

These measures are likely to have the greatest impact on reducing youth access to tobacco products. These policies are already in place in Santa Clara County (unincorporated areas) and numerous cities within the County (see Attachment 2).

Additional policy elements to consider include:

- Require retailers to post a notice saying that the sale of tobacco products to anyone under 21 years of age is illegal and subject to penalties.
- Require retailers to check the identification for any purchaser who appears to be under 30 years of age.
- Prohibit the sale of tobacco products from a vending machine.
- Prohibit retailers from covering more than 15% of windows and clear doors with any type of ads or signs.
- Prohibit mobile tobacco retailing or tobacco retailing at a temporary event.

Policy options are discussed in more detail below.

Tobacco Retailer Permit Elements
The City has numerous policy options to consider in reducing youth access to tobacco. All of the policy options described below may be incorporated as part of a tobacco retailer permit requirement.

Require a Local Permit to Sell Tobacco Products

Although the State of California requires a license to sell tobacco products, more than 150 cities and counties also require a local tobacco retailer permit (TRP). A local TRP is generally adopted to:

- Create more comprehensive restrictions than State law on the sale or marketing of tobacco products in the retail environment (such as density regulations or limits on the sale of flavored tobacco products);
- Allow meaningful penalties for violation of tobacco control laws such as license suspension; and
- Help fund local enforcement of tobacco control laws through the local licensing fee.

In Santa Clara County, the cities of Palo Alto and Cupertino and the Town of Los Gatos have contracted with the County of Santa Clara for management and enforcement of their TRP program in exchange for the revenue collected from the TRP permit. These three municipalities adopted an ordinance identical to the County ordinance in order to participate in the city-county partnership. The cities of Campbell, Gilroy, Los Altos, Morgan Hill, San Jose, and Saratoga administer and enforce a TRP in-house.

Approximately 40 tobacco retailers currently operate in the City. Retail stores can sell tobacco products as an accessory use and smoke shops are allowed in certain commercial zoning districts with a conditional use permit without any required buffers from sensitive land uses.

Prohibit the Sale of Flavored Tobacco Products

The most comprehensive approach to addressing the availability of flavored tobacco and nicotine products is to prohibit the sale of such products everywhere in the city. Such a prohibition would apply to flavored e-cigarettes, e-liquids, flavored cigars, little cigars, flavored hookah and shisha products, and menthol cigarettes. E-liquids are nicotine solutions that are used with e-cigarettes. These liquid solutions are available in thousands of flavors that are attractive to youth, such as gummy bear and cotton candy.

Flavored tobacco products are considered “starter” products for youth who begin to use tobacco, establishing tobacco habits that can lead to long-term addition. Youth believe that flavored tobacco products are safer and less addictive than non-flavored varieties.

In Santa Clara County, the cities of Cupertino, Los Altos, Los Gatos, Morgan Hill, Palo Alto, Saratoga, Sunnyvale, and the County of Santa Clara prohibit the sale of flavored tobacco products. Some cities provide exemptions for menthol cigarettes or loose-leaf tobacco products. See Attachment 2, Tobacco Free Communities Policies in Santa Clara County, for the full comparison table of smoke-free policies within the County.

Prohibit the Sale of Electronic Cigarette Products

E-cigarette devices are the most popular tobacco product among California youth. In a state survey, 7.7 percent of Santa Clara County teens reported using e-cigarettes in the past month. Youth users of this new generation of e-cigarette products are 7 to 8 times more likely to try cigarettes and become regular smokers one year later relative to their peers who do not try them. At the same time, no e-cigarette has been approved as a cessation device by the FDA and many adult e-cigarette users continue to use combustible products.

The cities of Cupertino, Los Altos, Los Gatos, Morgan Hill, Palo Alto, Saratoga, and County of Santa Clara prohibit the sale of all electronic cigarettes and vaping products.

Limit the Location and Types of Tobacco Retailers

Many communities are looking for strategies to reduce the availability of tobacco products to reduce youth access to such products. These restrictions can also help target enforcement of tobacco retailer licensing requirements and reduce perceptions that tobacco use is normal and acceptable. Policy options include:

- Prohibit new tobacco retailers within a certain distance of schools or other youth-oriented facilities. Example: retailers may not locate within 1,000 feet of schools or playgrounds.

- Prohibit new retailers within a certain distance of existing tobacco retailers. Example: tobacco retailers are not permitted within 500 feet of an existing tobacco retailer.

- Limit tobacco retailers relative to population size or place a cap on the total number of tobacco retailers. Example: there can be no more than 1 store for every 2,500 people.

- Prohibit the sale of tobacco products by certain types of retailers, such as pharmacies.

These requirements could be included as elements of a TRP.

Research has shown that the density of tobacco retailers, particularly in neighborhoods around schools, is associated with increased youth smoking rates. Tobacco retailers near schools with high smoking rates have also been shown to have lower cigarette prices and more in-store promotions. Additionally, children are more likely to experiment with, and use, tobacco products when tobacco retailers are located near homes.

Research also shows that the presence of tobacco in retail settings normalizes the use of tobacco products and triggers smoking urges among former smokers and those attempting to quit. Sales of harmful tobacco products in pharmacies present an inherent conflict of interest and send mixed messages about the health risks posed by tobacco. By selling tobacco products, pharmacies reinforce positive social perceptions of smoking, convey implied approval of tobacco use, and send a message that it is not so dangerous to smoke.

In Santa Clara County, Cupertino, Gilroy, Los Altos, Los Gatos, Palo Alto, and Saratoga and the unincorporated area restrict the location of new tobacco retailers: (Appendix A). Cupertino, Los Altos, Los Gatos, Palo Alto, Saratoga and the unincorporated area prohibit the sale of tobacco products in pharmacies.

More than 50 local governments in California restrict the location of tobacco retailers within a certain distance of schools. The most common buffer zone in such laws is 1,000 feet. However, some communities have customized the policy by choosing a different buffer zone and/or adding additional youth-oriented locations, such as childcare facilities, youth centers, libraries, playgrounds, parks, and recreational facilities.

If restrictions on the location or type of tobacco retailers are adopted as a component of a TRP ordinance, new retailers within prohibited areas (e.g., 1,000 feet of schools) or of prohibited types (e.g., pharmacies) would be ineligible for a tobacco retailer license.

<u>Implementation and Enforcement</u>
If the City adopts a TRP ordinance that matches the County's ordinance, the County's Department of Environmental Health (DEH) has agreed to administer, implement, and enforce the City's ordinance. Staff recommends that this would be the most efficient and cost-effective way to administer and enforce new regulations on tobacco retailers. An agreement would be negotiated and executed by the City Manager with the County prior to the start of the TRP program. The County's ordinance includes the following elements:

- Require a local permit to sell tobacco products;
- Prohibit the sale of flavored tobacco products, including menthol cigarettes;
- Prohibit the sale of all electronic smoking devices (e-cigarettes) and vaping products;
- Require that new tobacco retailers are located a minimum distance from schools (e.g., 1,000 feet);
  Require that new tobacco retailers are located a minimum distance from existing tobacco retailers (e.g., 500 feet); and
- Prohibit tobacco sales in pharmacies.
- Require retailers to post a notice saying that the sale of tobacco products to anyone under 21 years of age is illegal and subject to penalties.
- Require retailers to check the identification for any purchaser who appears to be under 30 years of age.
- Prohibit the sale of tobacco products from a vending machine.
- Prohibit retailers from covering more than 15% of windows and clear doors with any type of ads or signs.
- Prohibit mobile tobacco retailing or tobacco retailing at a temporary event.

The fee for a TRP administered by the County is anticipated to be $725 per retail location for the initial application and $425 for each annual renewal. The fee amounts are supported by the County's costs per retailer for each application and permit, respectively. There is no financial impact to the City because the fees are collected by the County and they administer the permit program.

If the City chooses to deviate from the County's ordinance and administer its own TRP program, it would need to issue licenses to tobacco retailers (with a fee calculated to cover the City's costs) and create a mechanism for enforcing compliance with tobacco-related laws, which would include compliance checks of retailers by code enforcement staff and youth decoy operations in partnership with the County's Sheriff Department. Generally, TRP programs enforce a series of graduated penalties (increased fees and eventually suspension of license) on retailers who violate tobacco laws, such as selling tobacco to individuals under 21 years of age.

Public Engagement
An online community survey was open from July 15 to August 31, 2020 to gather feedback from the community about tobacco-related policies. The survey asked about policies to regulate tobacco retailers. The survey was advertised through the City website, social media, and postcard notices, which were mailed directly to all multi-unit properties in the City and distributed at the Senior Center and summer camps hosted by the Recreation and Community Services Department.

The survey received 125 responses. 69% of respondents said they think flavored tobacco products are more appealing to youth than unflavored tobacco products. Nearly 40% of respondents reported that they think it is easy for youth under the age of 21 to buy flavored tobacco products in Milpitas. Below are the responses to additional questions related to tobacco retailer policies.

Question	Support	Oppose	Not Sure
Would you support or oppose a law prohibiting the sale of flavored tobacco products in Milpitas?	83.87%	12.9%	3.23%
Would you support or oppose a law to prevent stores near schools from selling tobacco products, such as no new tobacco retailers within 1,000 feet of schools?	91.13%	8.06%	0.81%
Would you support or oppose a law that limits where stores that sell tobacco can be located within a community, such as no new tobacco retailers within 500 feet from existing tobacco retailers?	82.93%	8.13%	8.94%
Would you support or oppose a law that bans pharmacies from selling tobacco products?	79.17%	10.83%	10%
Would you support or oppose a law requiring store owners to purchase a local license to sell tobacco? The license fees would cover the cost of checking whether stores follow tobacco laws.	85.71%	9.24%	5.04%

As seen in the table above, the vast majority of respondents were in favor of the proposed policies. For full survey responses please see Attachment 3.

Another survey is currently being administered by the Recreation and Community Services Department to gather additional feedback from the community regarding flavored tobacco and tobacco retail location limits. The survey was launched on August 12, 2021 and remained open until the end of September. The survey was advertised through the City website and social media. City staff will also conduct targeted outreach to businesses through mailers and virtual forums to receive feedback on tobacco retail policy options.

Next Steps
Based on the direction from the Council and the results from the additional community outreach, staff will prepare an ordinance and implementation plan for adoption by the Council in Winter 2021.

<u>Policy Alternatives:</u>

Alternative: The Council may provide direction to staff to not prepare a TRP ordinance.

Pros: None.

Cons: The City would not have a mechanism for regulating tobacco retailers. A TRP program would allow the City to establish a structure to monitor and enforce tobacco laws, encourage responsible tobacco retailing, and to discourage violation of laws related to tobacco products.

Reason not recommended: Policies to regulate tobacco retailers would reduce youth access to tobacco products and demonstrate the City's commitment to protecting the health of its residents.

Fiscal Impact:
The City has been awarded $37,560 to cover the costs of developing the proposed regulations and conducting the associated outreach. Although the service agreement with Santa Clara County expired on September 30, 2021, the County is providing a consultant who will continue to work with City staff to prepare documents, research, and materials at no cost to the City. Additional staff time is required to develop and enforce the TRP ordinance and program. However, no additional funding is requested at this time.

Environmental Review:
The Ordinance is not a project under the requirements of the California Environmental Quality Act (CEQA) and the CEQA Guidelines because it has no potential for resulting in either a direct or reasonably foreseeable indirect change in the environment. If the Ordinance is found to be a project under CEQA, the action being considered is exempt from environmental review pursuant to CEQA Guidelines Section 15061(b)(3) in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The Ordinance, which would regulate current tobacco retailers and prohibit new tobacco retailers in certain locations, would have no or only a de minimis impact on the environment.

Recommendation:

1. Receive a presentation from staff; and
2. Provide feedback and direction on tobacco retail permitting, flavored tobacco and electronic cigarette products, and tobacco retail location limits.

Attachments:

1. Service Agreement with Santa Clara County
2. Tobacco-Free Communities Policies in Santa Clara County
3. Tobacco Survey Results

8/2021: Tobacco-Free Communities - Policies Across Santa Clara County Jurisdictions

Jurisdiction	Reducing Exposure to Secondhand Smoke							Reducing Youth Access & Exposure to Tobacco Products					
	Parks & Trails	Outdoor Dining Areas	Entryways	Service Areas	Public Events	Multi-Unit Housing	Common Areas of Multi-Unit Housing	Tobacco Retail Permit	Reduce Density of Tobacco Outlets	Limit Sales Near Schools	Flavored Tobacco Restrictions	Limit Sales in Pharmacies	Restricts Sale of all Tobacco (T) and/or Vaping (V) Products
% of County population covered by policy	92.6%	97.2%	39.3%	93.0%	38.7%	35.7%	91.2%	77.4%	16.3%	19.1%	26.5%	16.3%	18.5%
County of Santa Clara	2010	2010	2010	2010		2010	2010	2010	2010	2010	2010	2010	2019 (V)
Campbell	2011	2011	2011	2011	2011			2012					
Cupertino	2011	2014	2014	2021	2021	2021	2021	2019	2019	2019	2019	2019	2020 (V)
Gilroy	2021							2014		2014			
Los Altos	2011	2018	2018	2018	2018			2020	2020	2020	2020	2020	2020 (V)
Los Altos Hills		n/a*		n/a*	n/a*	n/a*	n/a*	n/a*	n/a*	n/a*	n/a*	n/a*	n/a*
Los Gatos	2013	pre-2010	2016	2016	2016	2016	2016	2017	2017	2017	2017	2017	2019 (V)
Milpitas	2012	2017	2021	2021	2021	2021	2021						
Monte Sereno	n/a*	n/a*	n/a*	n/a*	n/a*	2020	2020	n/a*	n/a*	n/a*	n/a*	n/a*	n/a*
Morgan Hill	2012	2012	2012	2012	2012			2014			2019***		2019(V)
Mountain View		2012	2012		2012	2021	2021						
Palo Alto	2013	2014	2014	2014	2014	2016	2016	2017	2017	2017	2017	2017	2020 (V)
San Jose	pre-2010	2012		2012			2012	2011					
Santa Clara	2019	2019	2019	2019	2019	2019	2019						
Saratoga	pre-2010	2016	2016	2016	2016		2016	2015	2016	2016	2018**	2018	2020 (V)
Sunnyvale	2012	2016	2016	2016	2016	2016	2016				2020		

** Not included in denominator of % of county population covered by policy because don't have the specific venues/areas covered by policy (Ex. Monte Sereno & Los Altos Hills do not have any tobacco retailers)*

*** Includes exemption for menthol-cigarettes*

**** Includes exemption for loose-leaf tobacco products*

Rev. 8/20/2021

Pink shaded boxes indicate where cities applied for PHD funding to work on policy indicator(s) & work is in process.

Tobacco Retailer Permit Elements
The City has numerous policy options to consider in reducing youth access to tobacco. All of the policy options described below may be incorporated as part of a tobacco retailer permit requirement.

Require a Local Permit to Sell Tobacco Products
Although the State of California requires a license to sell tobacco products, more than 150 cities and counties also require a local tobacco retailer permit (TRP). A local TRP is generally adopted to:

- Create more comprehensive restrictions than State law on the sale or marketing of tobacco products in the retail environment (such as density regulations or limits on the sale of flavored tobacco products);
- Allow meaningful penalties for violation of tobacco control laws such as license suspension; and
- Help fund local enforcement of tobacco control laws through the local licensing fee.

In Santa Clara County, the cities of Palo Alto and Cupertino and the Town of Los Gatos have contracted with the County of Santa Clara for management and enforcement of their TRP program in exchange for the revenue collected from the TRP permit. These three municipalities adopted an ordinance identical to the County ordinance in order to participate in the city-county partnership. The cities of Campbell, Gilroy, Los Altos, Morgan Hill, San Jose, and Saratoga administer and enforce a TRP in-house.

Approximately 40 tobacco retailers currently operate in the City of Milpitas. Retail stores can sell tobacco products as an accessory use, and smoke shops are allowed in certain commercial zoning districts with a conditional use permit without any required buffers from sensitive land uses.

Prohibit the Sale of Flavored Tobacco Products
The most comprehensive approach to addressing the availability of flavored tobacco and nicotine products is to prohibit the sale of such products everywhere in the city. Such a prohibition would apply to flavored e-cigarettes, e-liquids, flavored cigars, little cigars, flavored hookah and shisha products, and menthol cigarettes. E-liquids are nicotine solutions that are used with e-cigarettes. These liquid solutions are available in thousands of flavors that are attractive to youth, such as gummy bear and cotton candy.

Flavored tobacco products are considered “starter” products for youth who begin to use tobacco, establishing tobacco habits that can lead to long-term addiction. Youth believe that flavored tobacco products are safer and less addictive than non-flavored varieties.

In Santa Clara County, the cities of Cupertino, Los Altos, Los Gatos, Morgan Hill, Palo Alto, Saratoga, Sunnyvale, and the County of Santa Clara prohibit the sale of flavored tobacco products. Some cities provide exemptions for menthol cigarettes or loose-leaf tobacco products. See Attachment 2, Tobacco Free Communities Policies in Santa Clara County, for the full comparison table of smoke-free policies within the County.

Prohibit the Sale of Electronic Cigarette Products
E-cigarette devices are the most popular tobacco product among California youth. In a state survey, 7.7 percent of Santa Clara County teens reported using e-cigarettes in the past month.

Youth users of this new generation of e-cigarette products are 7 to 8 times more likely to try cigarettes and become regular smokers one year later relative to their peers who do not try them. At the same time, no e-cigarette has been approved as a cessation device by the FDA and many adult e-cigarette users continue to use combustible products.

The cities of Cupertino, Los Altos, Los Gatos, Morgan Hill, Palo Alto, Saratoga, and County of Santa Clara prohibit the sale of all electronic cigarettes and vaping products.

Limit the Location and Types of Tobacco Retailers

Many communities are looking for strategies to reduce the availability of tobacco products to reduce youth access to such products. These restrictions can also help target enforcement of tobacco retailer licensing requirements and reduce perceptions that tobacco use is normal and acceptable. Policy options include:

- Prohibit new tobacco retailers within a certain distance of schools or other youth-oriented facilities. Example: retailers may not locate within 1,000 feet of schools or playgrounds.
- Prohibit new retailers within a certain distance of existing tobacco retailers. Example: tobacco retailers are not permitted within 500 feet of an existing tobacco retailer.
- Limit tobacco retailers relative to population size or place a cap on the total number of tobacco retailers. Example: there can be no more than 1 store for every 2,500 people.
- Prohibit the sale of tobacco products by certain types of retailers, such as pharmacies.

These requirements could be included as elements of a TRP.

Research has shown that the density of tobacco retailers, particularly in neighborhoods around schools, is associated with increased youth smoking rates. Tobacco retailers near schools with high smoking rates have also been shown to have lower cigarette prices and more in-store promotions. Additionally, children are more likely to experiment with, and use, tobacco products when tobacco retailers are located near homes.

Research also shows that the presence of tobacco in retail settings normalizes the use of tobacco products and triggers smoking urges among former smokers and those attempting to quit. Sales of harmful tobacco products in pharmacies present an inherent conflict of interest and send mixed messages about the health risks posed by tobacco. By selling tobacco products, pharmacies reinforce positive social perceptions of smoking, convey implied approval of tobacco use, and send a message that it is not so dangerous to smoke.

In Santa Clara County, Cupertino, Gilroy, Los Altos, Los Gatos, Palo Alto, and Saratoga and the unincorporated area restrict the location of new tobacco retailers: (Appendix A). Cupertino, Los Altos, Los Gatos, Palo Alto, Saratoga and the unincorporated area prohibit the sale of tobacco products in pharmacies.

More than 50 local governments in California restrict the location of tobacco retailers within a certain distance of schools. The most common buffer zone in such laws is 1,000 feet. However, some communities have customized the policy by choosing a different buffer zone and/or adding additional youth-oriented locations, such as childcare facilities, youth centers, libraries, playgrounds, parks, and recreational facilities.

If restrictions on the location or type of tobacco retailers are adopted as a component of a TRP ordinance, new retailers within prohibited areas (e.g., 1,000 feet of schools) or of prohibited types (e.g., pharmacies) would be ineligible for a tobacco retailer license.

Tobacco Retailer Laws: Palo Alto

Santa Clara County PUBLIC HEALTH

Tobacco Retailers are required to:

Tobacco Retailer Permit

- Get a permit (also known as a license) to sell tobacco products from both:
  1. The California Department of Tax and Fee Administration AND
  2. The County of Santa Clara (Under Contract with the City of Palo Alto)

Two permits are required for each retail location. The permit must be renewed each year and displayed at the store.

Tobacco Permit Eligibility

- Permits cannot be issued to a new tobacco retail outlet within 1,000 feet of a school or within 500 feet of other tobacco retailers. Existing tobacco retailers are allowed to continue operating in these locations unless the retailer doesn't renew the permit on time or the business adds or changes owners.

- Permits cannot be issued to a location with a licensed pharmacy.

Tobacco Sales

- Check ID for anyone who appears to be under the age of 30.

- Post a sign, at EACH register, saying that it's illegal to sell tobacco products to anyone under age 21. Free STAKE Act signs are available from the California Department of Public Health: www.cdph.ca.gov/Tobacco21

NOTE: The We Card sign provided by the tobacco industry does not meet the state law requirements.

It is illegal to:

- Sell tobacco products to anyone under the age of 21.

  "Tobacco product" includes: cigarettes, cigars, little cigars or cigarillos, smokeless tobacco, hookah, electronic smoking devices with or without nicotine, and any products for use with electronic smoking devices (such as e-liquids with or without nicotine).

- Sell electronic cigarette products, such as e-cigarettes, vape pens, tanks, and mods.

- Sell flavored tobacco products, including menthol cigarettes, flavored cigars, flavored electronic cigarettes, or e-liquids. Examples include fruit flavors, candy flavors, alcohol flavors, and spice flavors.

- Sell single cigarettes.

- Sell tobacco products through a self-service display (an open display that the public can access without the help of a clerk).

- Sell tobacco products through a vending machine.

- Allow clerks under 21 years of age to sell tobacco products.

- Give away free or low-cost cigarettes or smokeless tobacco products, or coupons for such products.

Advertising

- Cover more than 15% of windows and clear doors with advertising or signs of any sort.

Smoking

- Smoke or use electronic smoking devices in retail outlets or within 25 feet of doorways, windows, or vents.

Penalties

Retailers who sell tobacco without a permit/license or who violate any local, state, or federal tobacco control laws are subject to the following penalties:

	1st Violation	2nd Violation	Each Additional Violation
Selling Tobacco Without a Permit	No permit for 30 days Fine up to $100	No permit for 90 days for the second violation in 2 years Fine up to $200 for the second violation within 12 months	No permit for 1 year for each additional violation within 2 years Fine up to $500 for each additional violation within 12 months
Selling Tobacco Products to an Individual under 21 or Violating Other Tobacco Laws	Permit suspension for up to 30 days Fine up to $100	Permit suspension for up to 90 days for additional violations within 5 years Fine up to $200 for the second violation within 12 months	Permit suspension for up to 1 year for each additional violation within 5 years Fine up to $500 for each additional violation within 12 months

Additional Resources

For additional information, please visit www.sccphd.org/tobaccofree or contact the Santa Clara County Tobacco-Free Communities Program at tobaccoprevention@phd.sccgov.org or (408) 885-4456.

References

Palo Alto Municipal Code Chapter 4.64 and 9.14; California Business & Professions Code Divisions 8.5 and 8.6; California Health & Safety Code section 118950; California Penal Code sections 308, 308.2, 308.3; Code of Federal Regulations, Title 21, Part 1140.

Fact Sheet provided by the Santa Clara County Department of Public Health, Tobacco-Free Communities Program.

Last Updated September 11, 2020

Tobacco Retailer Laws: Cupertino

Santa Clara County PUBLIC HEALTH

Tobacco Retailers are required to:

Tobacco Retailer Permit

- Get a permit (also known as a license) to sell tobacco products from both:
  1. The California Department of Tax and Fee Administration AND
  2. The County of Santa Clara (Under Contract with the City of Cupertino)

Two permits are required for each retail location. The permit must be renewed each year and displayed at the store.

Tobacco Permit Eligibility

- Permits cannot be issued to a new tobacco retail outlet within 1,000 feet of a school or within 500 feet of other tobacco retailers. Existing tobacco retailers are allowed to continue operating in these locations unless the retailer doesn't renew the permit on time or the business adds or changes owners.

- Permits cannot be issued to a location with a licensed pharmacy.

Tobacco Sales

- Check ID for anyone who appears to be under the age of 30.

- Post a sign, at EACH register, saying that it's illegal to sell tobacco products to anyone under age 21. Free STAKE Act signs are available from the California Department of Public Health: www.cdph.ca.gov/Tobacco21

NOTE: The We Card sign provided by the tobacco industry does not meet the state law requirements.

It is illegal to:

- Sell tobacco products to anyone under the age of 21.

  "Tobacco product" includes: cigarettes, cigars, little cigars or cigarillos, smokeless tobacco, hookah, electronic smoking devices with or without nicotine, and any products for use with electronic smoking devices (such as e-liquids with or without nicotine).

- Sell electronic cigarette products, such as e-cigarettes, vape pens, tanks, and mods.

- Sell flavored tobacco products, including menthol cigarettes, flavored cigars, flavored electronic cigarettes, or e-liquids. Examples include fruit flavors, candy flavors, alcohol flavors, and spice flavors..

- Sell single cigarettes.

- Sell tobacco products through a self-service display (an open display of tobacco products that is accessible to the public without clerk assistance).

- Sell tobacco products through a vending machine.

- Allow clerks under 21 years of age to sell tobacco products.

- Give away free or low-cost cigarettes or smokeless tobacco products, or coupons for such products.

Advertising

- Cover more than 15% of windows and clear doors with advertising or signs of any sort.

Penalties

Retailers who sell tobacco without a permit/license or who violate any local, state, or federal tobacco control laws are subject to the following penalties:

	1st Violation	2nd Violation	Each Additional Violation
Selling Tobacco Without a Permit	No permit for 30 days within 5 years Fine up to $100	No permit for 90 days within 5 years Fine up to $200 within 12 months	No permit for 1 year within 5 years Fine up to $500 within 12 months
Selling Tobacco Products to Individuals Under 21 or Violating Other Tobacco Laws	No permit for 30 days within 5 years Fine up to $100	No permit for 90 days within 5 years Fine up to $200 within 12 months	No permit for 1 year within 5 years Fine up to $500 within 12 months

Additional Resources

For additional information, please visit www.sccphd.org/tobaccofree or contact the Santa Clara County Tobacco-Free Communities Program at tobaccoprevention@phd.sccgov.org or (408) 885-4456.

References

Cupertino Municipal Code Chapter 5.50; California Business & Professions Code Divisions 8.5 and 8.6, section 25612.5; California Health & Safety Code section 118950; California Penal Code sections 308, 308.2, 308.3; Code of Federal Regulations, Title 21, Part 1140.

Fact Sheet provided by the Santa Clara County Department of Public Health, Tobacco-Free Communities Program.

Last Updated September 11, 2020

Tobacco Retailer Laws: Los Gatos

Santa Clara County PUBLIC HEALTH

Tobacco Retailers are required to:

Tobacco Retailer Permit

- Get a permit (also known as a license) to sell tobacco products from both:
  1. The California Department of Tax and Fee Administration AND
  2. The County of Santa Clara (Under Contract with the Town of Los Gatos)

Two permits are required for each retail location. The permit must be renewed each year and displayed at the store.

Tobacco Permit Eligibility

- Permits cannot be issued to a new tobacco retail outlet within 1,000 feet of a school or within 500 feet of other tobacco retailers. Existing tobacco retailers are allowed to continue operating in these locations unless the retailer doesn't renew the permit on time or the business adds or changes owners.

- Permits cannot be issued to a location with a licensed pharmacy.

Tobacco Sales

- Check ID for anyone who appears to be under the age of 30.

- Post a sign, at EACH register, saying that it's illegal to sell tobacco products to anyone under age 21. Free STAKE Act signs are available from the California Department of Public Health: www.cdph.ca.gov/Tobacco21

NOTE: The We Card sign provided by the tobacco industry does not meet the state law requirements.

It is illegal to:

- Sell tobacco products to anyone under the age of 21.

  "Tobacco product" includes: cigarettes, cigars, little cigars or cigarillos, smokeless tobacco, hookah, electronic smoking devices with or without nicotine, and any products for use with electronic smoking devices (such as e-liquids with or without nicotine).

- Sell electronic cigarette products, such as e-cigarettes, vape pens, tanks, and mods.

- Sell flavored tobacco products, including menthol cigarettes, flavored cigars, flavored electronic cigarettes, or e-liquids. Examples include fruit flavors, candy flavors, alcohol flavors, and spice flavors.

- Sell single cigarettes.

- Sell tobacco products through a self-service display (an open display that the public can access without the help of a clerk).

- Sell tobacco products through a vending machine.

- Allow clerks under 21 years of age to sell tobacco products.

- Give away free or low-cost cigarettes or smokeless tobacco products, or coupons for such products.

Advertising

- Cover more than 15% of windows and clear doors with advertising or signs of any sort.

Penalties

Retailers who sell tobacco without a permit/license or who violate any local, state, or federal tobacco control laws are subject to the following penalties:

	1st Violation	2nd Violation	Each Additional Violation
Selling Tobacco Without a Permit	No permit for 30 days Fine up to $100	No permit for 90 days for the second violation in 5 years Fine up to $200 for the second violation within 12 months	No permit for 1 year for each additional violation within 5 years Fine up to $500 for each additional violation within 12 months
Selling Tobacco Products to an Individual under 21 or Violating Other Tobacco Laws	Permit suspension for up to 30 days Fine up to $100	Permit suspension for up to 90 days for additional violations within 5 years Fine up to $200 for the second violation within 12 months	Permit suspension for up to 1 year for each additional violation within 5 years Fine up to $500 for each additional violation within 12 months

Additional Resources

For additional information, please visit www.sccphd.org/tobaccofree or contact the Santa Clara County Tobacco-Free Communities Program at tobaccoprevention@phd.sccgov.org or (408) 885-4456.

References

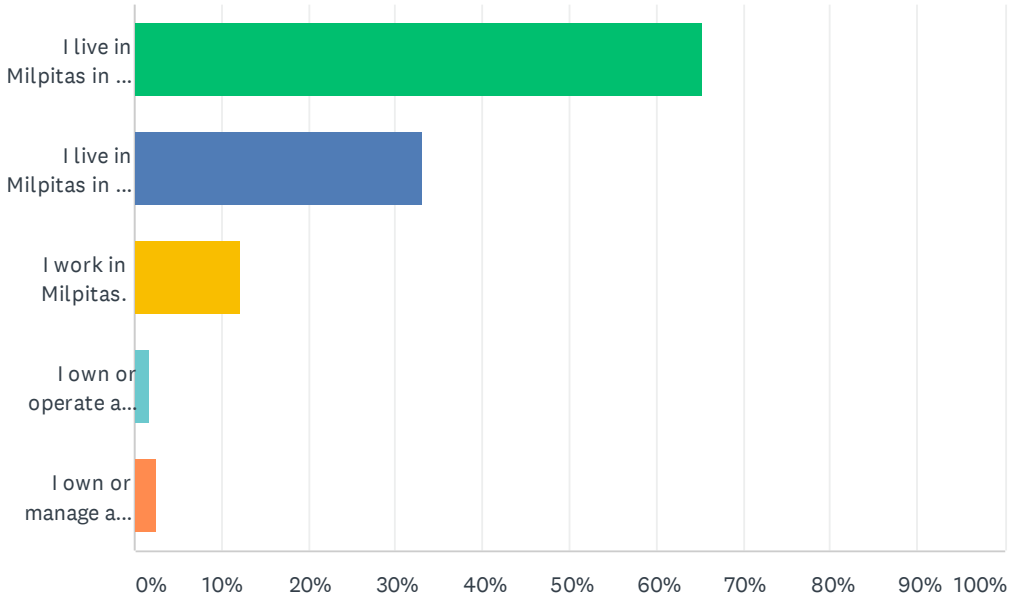
Los Gatos Municipal Code Chapter 18, Article VI; California Business & Professions Code Divisions 8.5 and 8.6; California Health & Safety Code section 118950; California Penal Code sections 308, 308.2, 308.3; Code of Federal Regulations, Title 21, Part 1140.

Fact Sheet provided by the Santa Clara County Department of Public Health, Tobacco-Free Communities Program.

Last Updated September 11, 2020

Q1 Tell us about yourself. (Check all that apply.)

Answered: 124 Skipped: 0



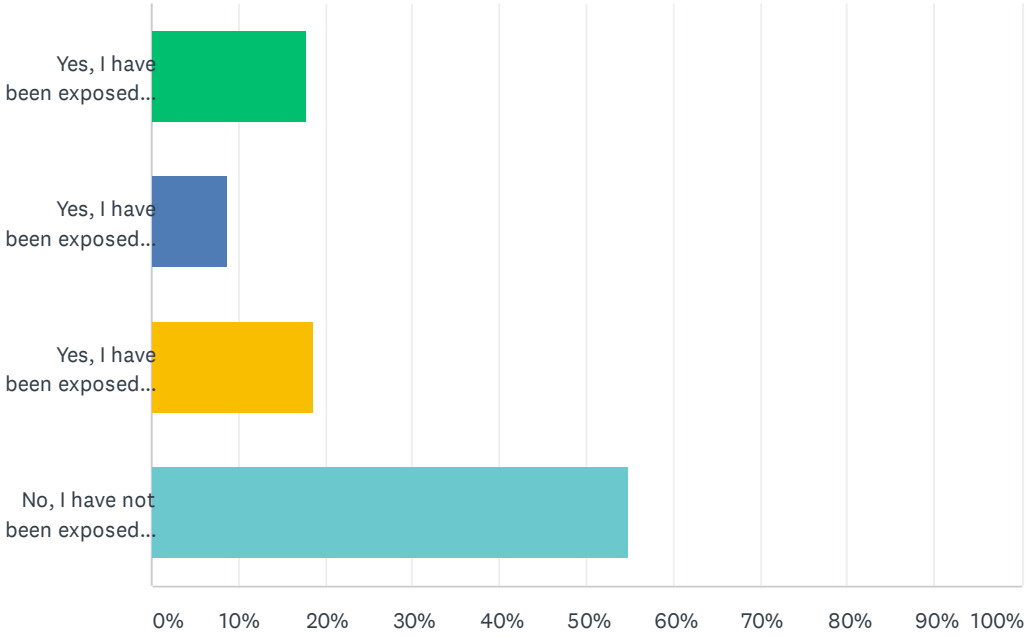
ANSWER CHOICES	RESPONSES	
I live in Milpitas in a single-family house.	65.32%	81
I live in Milpitas in an apartment, duplex, condominium or townhouse.	33.06%	41
I work in Milpitas.	12.10%	15
I own or operate a business in Milpitas.	1.61%	2
I own or manage a building with two or more residential units in Milpitas.	2.42%	3
Total Respondents: 124		

Q2 What is your zip code?

Answered: 124 Skipped: 0

Q3 In the past 30 days, have you been exposed to secondhand smoke at your home? (Secondhand smoke is smoke that comes from someone else using a tobacco or marijuana product.)

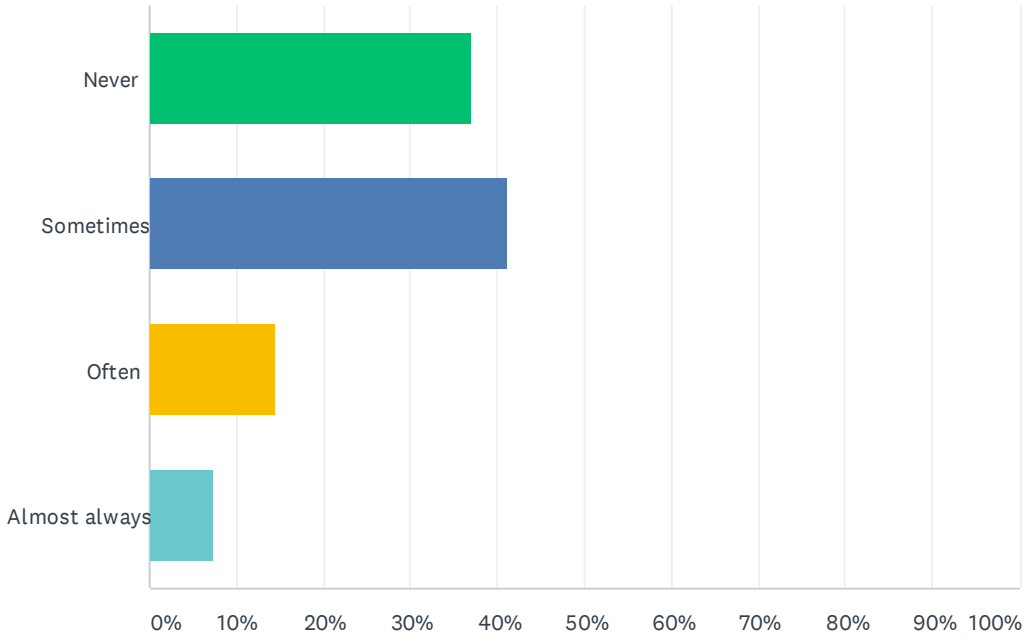
Answered: 124 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes, I have been exposed to tobacco smoke.	17.74%	22
Yes, I have been exposed to marijuana smoke.	8.87%	11
Yes, I have been exposed to both tobacco and marijuana smoke.	18.55%	23
No, I have not been exposed to secondhand smoke.	54.84%	68
TOTAL		124

Q4 In the past 30 days, how often have you noticed secondhand smoke (either tobacco or marijuana smoke) drifting into your home?

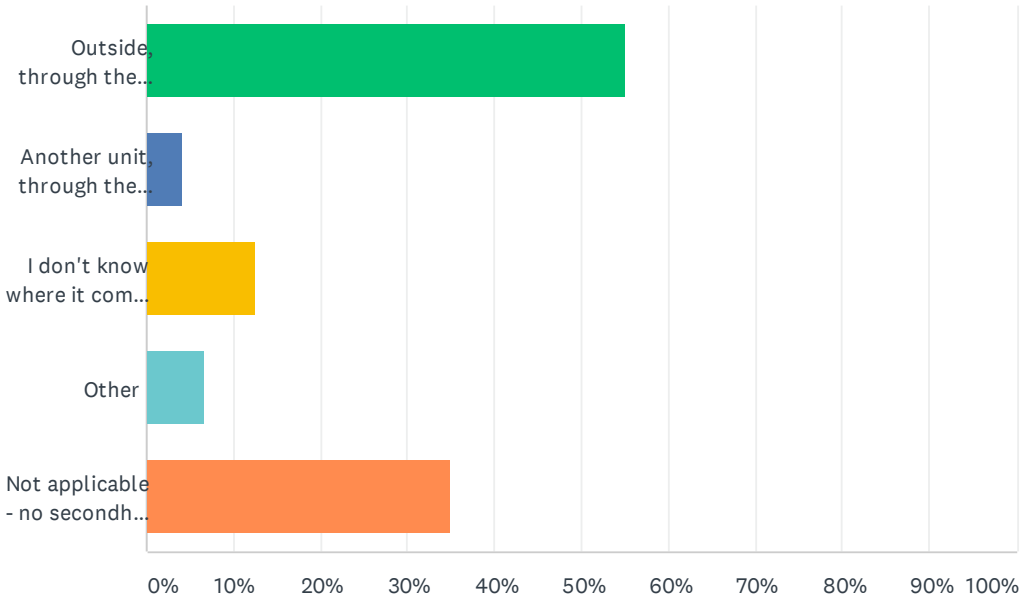
Answered: 124 Skipped: 0



ANSWER CHOICES	RESPONSES	
Never	37.10%	46
Sometimes	41.13%	51
Often	14.52%	18
Almost always	7.26%	9
TOTAL		124

Q5 Where do you think that secondhand smoke drifted into your unit from? (Check all that apply.)

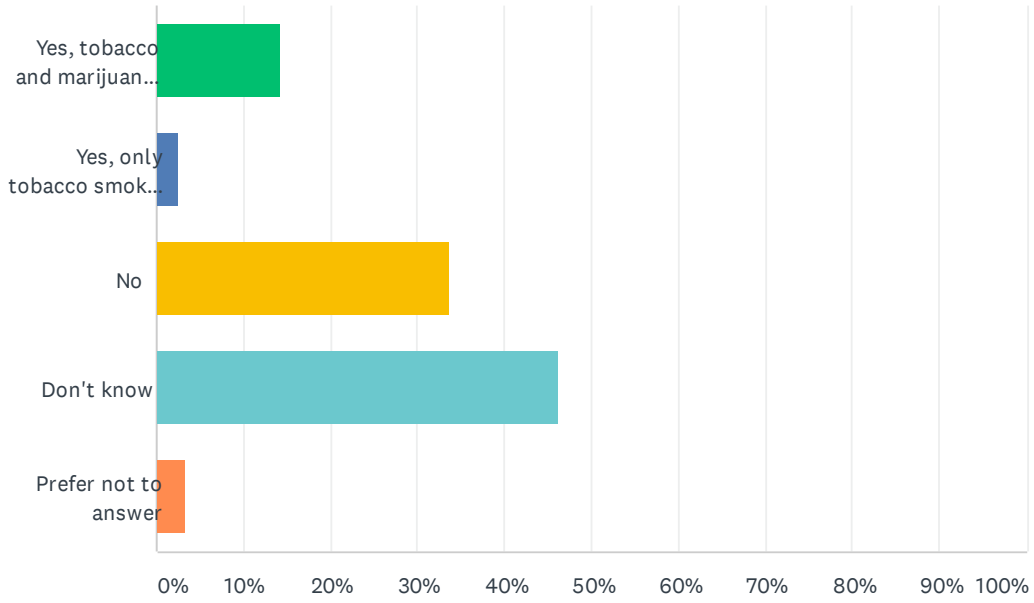
Answered: 120 Skipped: 4



ANSWER CHOICES	RESPONSES	
Outside, through the windows, door, vents, etc.	55.00%	66
Another unit, through the wall, ceiling floor or ventilation system	4.17%	5
I don't know where it comes from.	12.50%	15
Other	6.67%	8
Not applicable - no secondhand smoke in my residence	35.00%	42
Total Respondents: 120		

Q6 Does your housing complex have a policy to prohibit smoking inside your apartment, condominium, or townhouse?

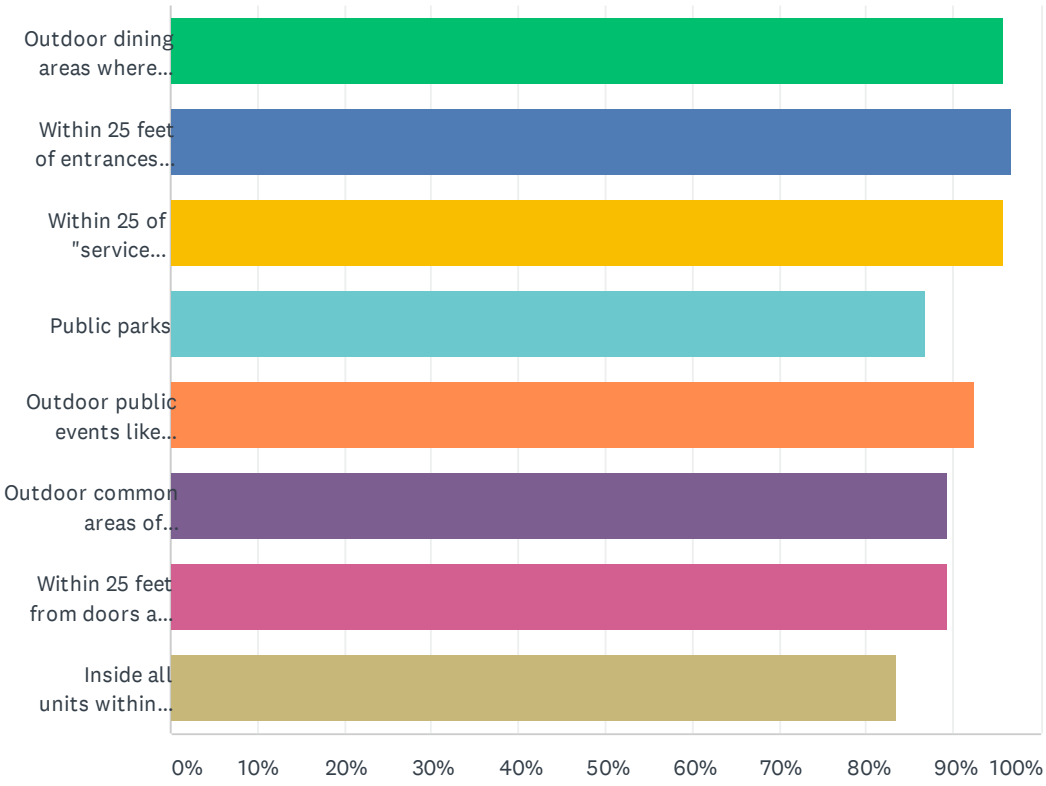
Answered: 119 Skipped: 5



ANSWER CHOICES	RESPONSES	
Yes, tobacco and marijuana smoking are prohibited	14.29%	17
Yes, only tobacco smoking is prohibited	2.52%	3
No	33.61%	40
Don't know	46.22%	55
Prefer not to answer	3.36%	4
TOTAL		119

Q7 Do you think smoking should be prohibited in the following locations? (Check all that apply.)

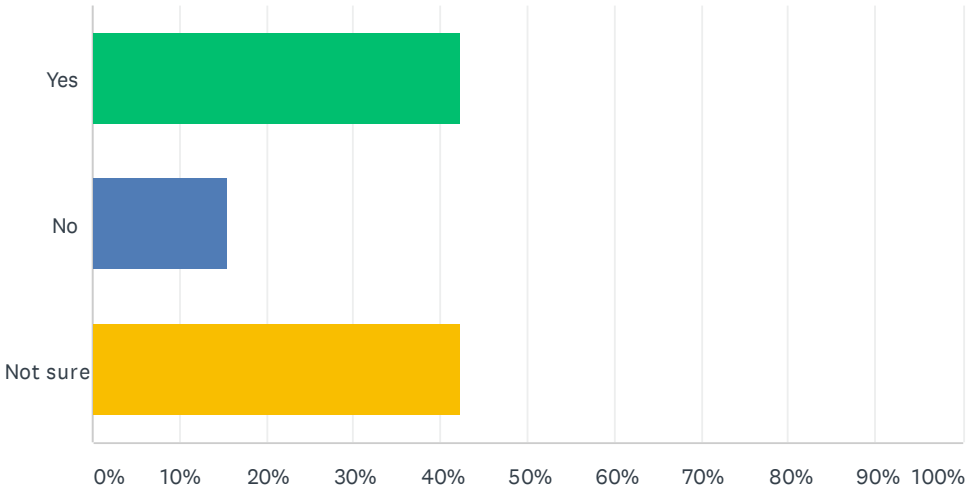
Answered: 121 Skipped: 3



ANSWER CHOICES	RESPONSES	
Outdoor dining areas where food and beverages are served, such as restaurant and bar patios	95.87%	116
Within 25 feet of entrances, exits, and windows to buildings where smoking is prohibited. This would apply to businesses, offices, grocery stores, restaurants, bars, places of worship, etc.	96.69%	117
Within 25 of "service areas", such as transit stops or ATMs	95.87%	116
Public parks	86.78%	105
Outdoor public events like farmers' markets and concerts	92.56%	112
Outdoor common areas of multi-family housing, such as walkways, courtyards, pool areas, etc. Multi-family housing means housing with two or more attached residences and includes apartments, duplexes, condominiums, and townhouses	89.26%	108
Within 25 feet from doors and windows of multi-family housing	89.26%	108
Inside all units within multi-family housing, including private balconies and patios	83.47%	101
Total Respondents: 121		

Q8 Are there any other areas in the City where you think smoking should be prohibited?

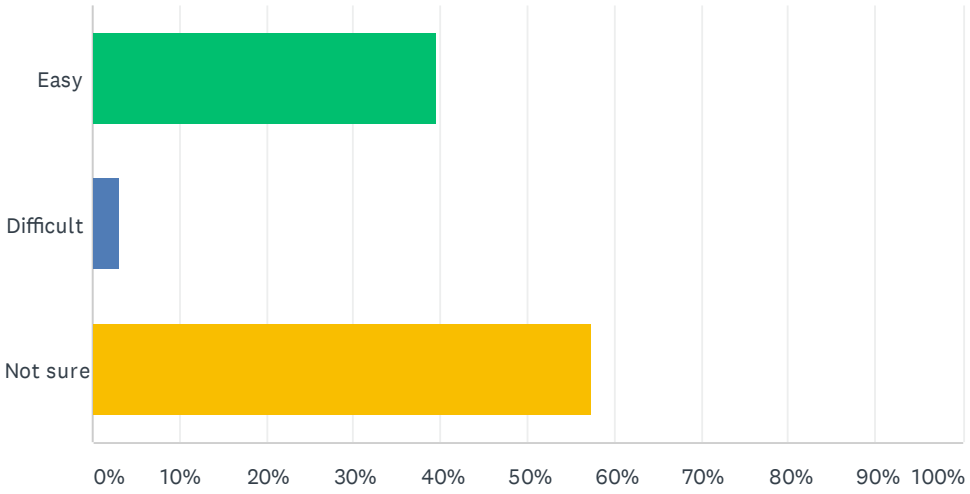
Answered: 123 Skipped: 1



ANSWER CHOICES	RESPONSES	
Yes	42.28%	52
No	15.45%	19
Not sure	42.28%	52
TOTAL		123

Q9 Do you think it is easy or difficult for youth under the age of 21 to buy flavored tobacco products in Milpitas? Flavored tobacco products include menthol cigarettes, little cigars, and electronic cigarettes in flavors such as fruit, candy, and liquor.

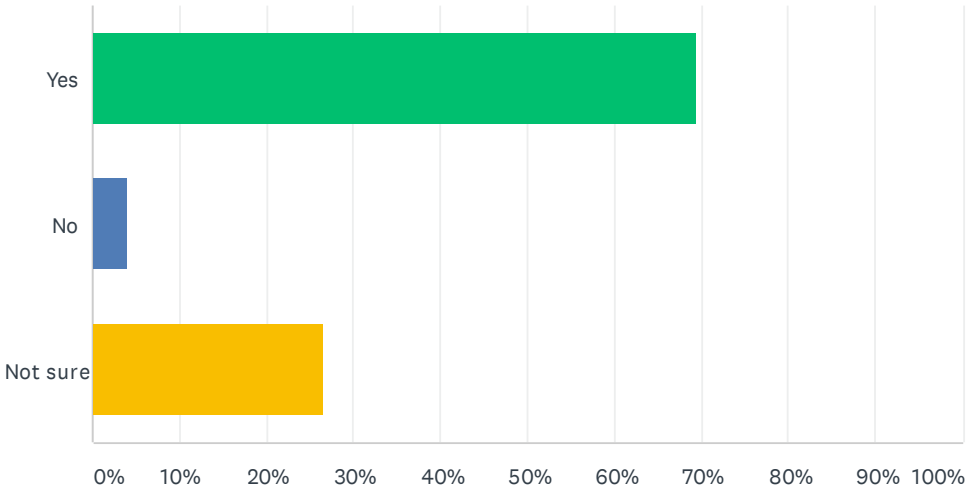
Answered: 124 Skipped: 0



ANSWER CHOICES	RESPONSES	
Easy	39.52%	49
Difficult	3.23%	4
Not sure	57.26%	71
TOTAL		124

Q10 Do you think flavored tobacco products are more appealing to youth than unflavored tobacco products?

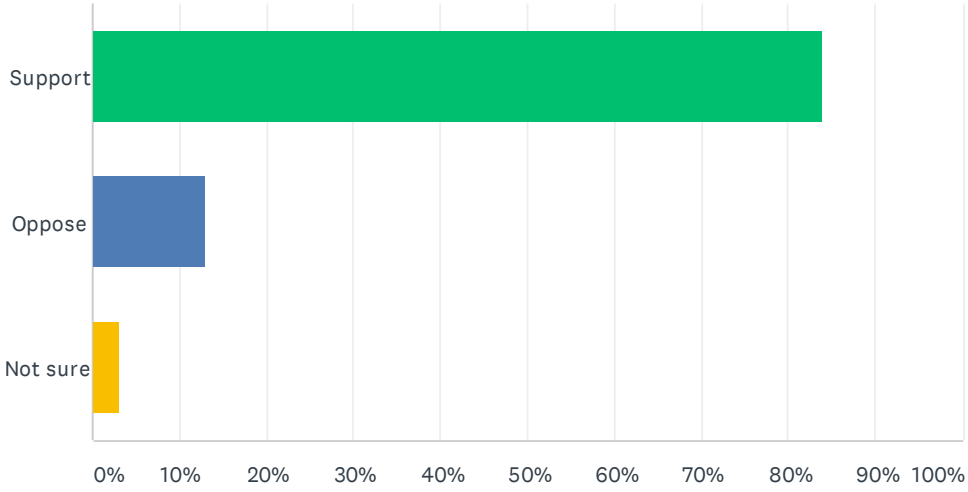
Answered: 124 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	69.35%	86
No	4.03%	5
Not sure	26.61%	33
TOTAL		124

Q11 Would you support or oppose a law prohibiting the sale of flavored tobacco products in Milpitas? Flavored tobacco products include menthol cigarettes, little cigars, and electronic cigarettes in flavors such as fruit, candy, and liquor.

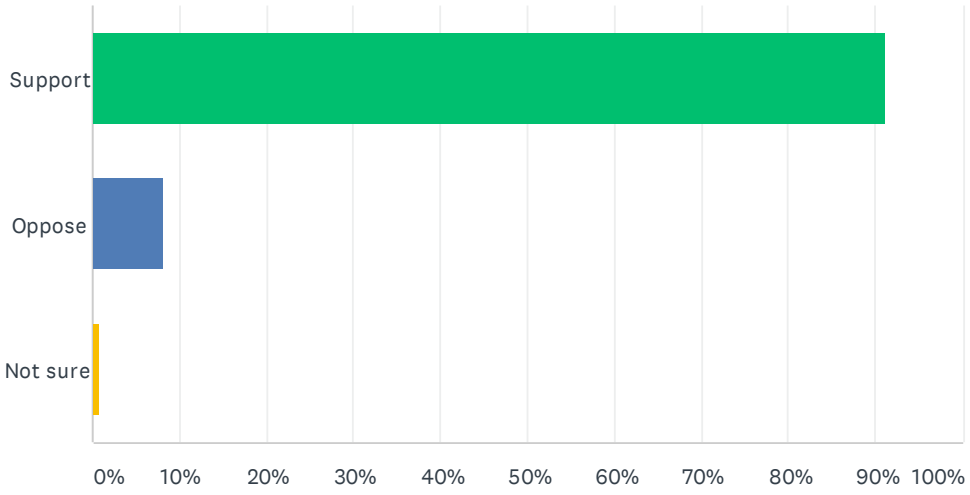
Answered: 124 Skipped: 0



ANSWER CHOICES	RESPONSES	
Support	83.87%	104
Oppose	12.90%	16
Not sure	3.23%	4
TOTAL		124

Q12 Would you support or oppose a law to prevent stores near schools from selling tobacco products, such as no new tobacco retailers within 1,000 feet of schools?

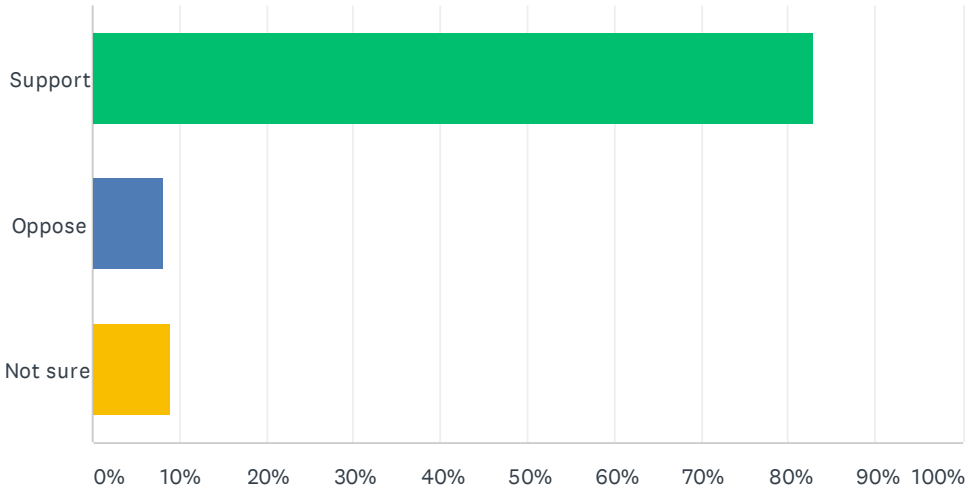
Answered: 124 Skipped: 0



ANSWER CHOICES	RESPONSES	
Support	91.13%	113
Oppose	8.06%	10
Not sure	0.81%	1
TOTAL		124

Q13 Would you support or oppose a law that limits where stores that sell tobacco can be located within a community, such as no new tobacco retailers within 500 feet from existing tobacco retailers?

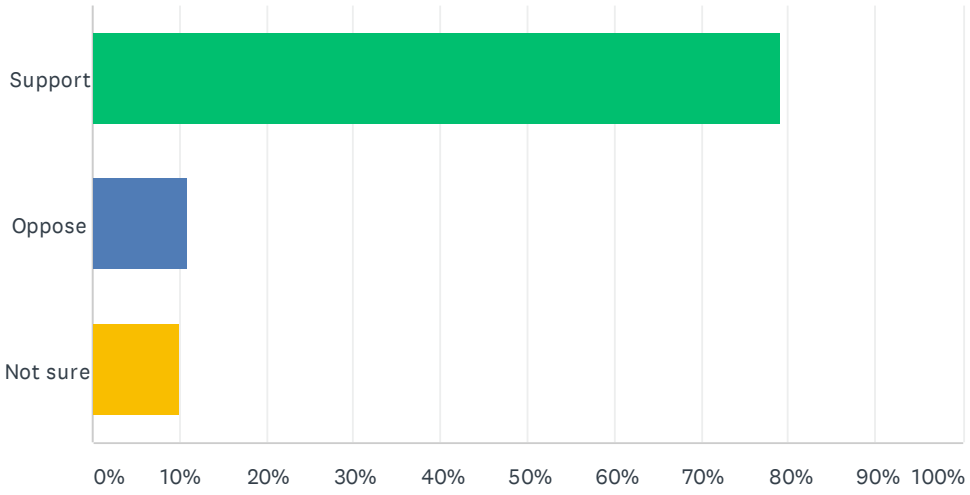
Answered: 123 Skipped: 1



ANSWER CHOICES	RESPONSES	
Support	82.93%	102
Oppose	8.13%	10
Not sure	8.94%	11
TOTAL		123

Q14 Would you support or oppose a law that bans pharmacies from selling tobacco products?

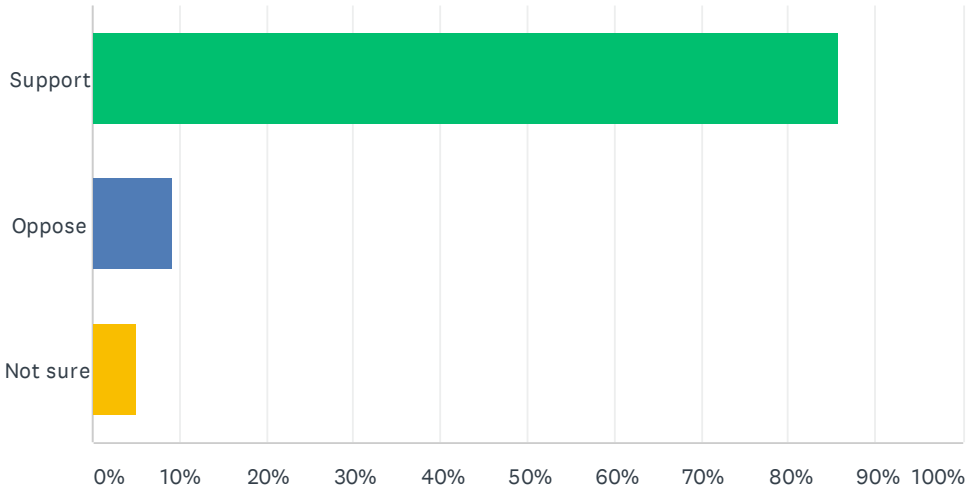
Answered: 120 Skipped: 4



ANSWER CHOICES	RESPONSES	
Support	79.17%	95
Oppose	10.83%	13
Not sure	10.00%	12
TOTAL		120

Q15 Would you support or oppose a law requiring store owners to purchase a local license to sell tobacco? The license fees would cover the cost of checking whether stores follow tobacco laws.

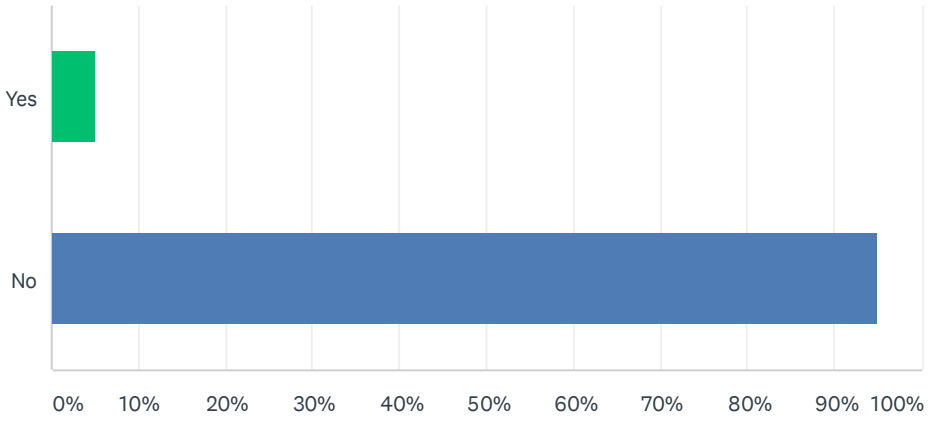
Answered: 119 Skipped: 5



ANSWER CHOICES	RESPONSES	
Support	85.71%	102
Oppose	9.24%	11
Not sure	5.04%	6
TOTAL		119

Q16 Do you smoke cigarettes, e-cigarettes, cigars, or other tobacco or cannabis products?

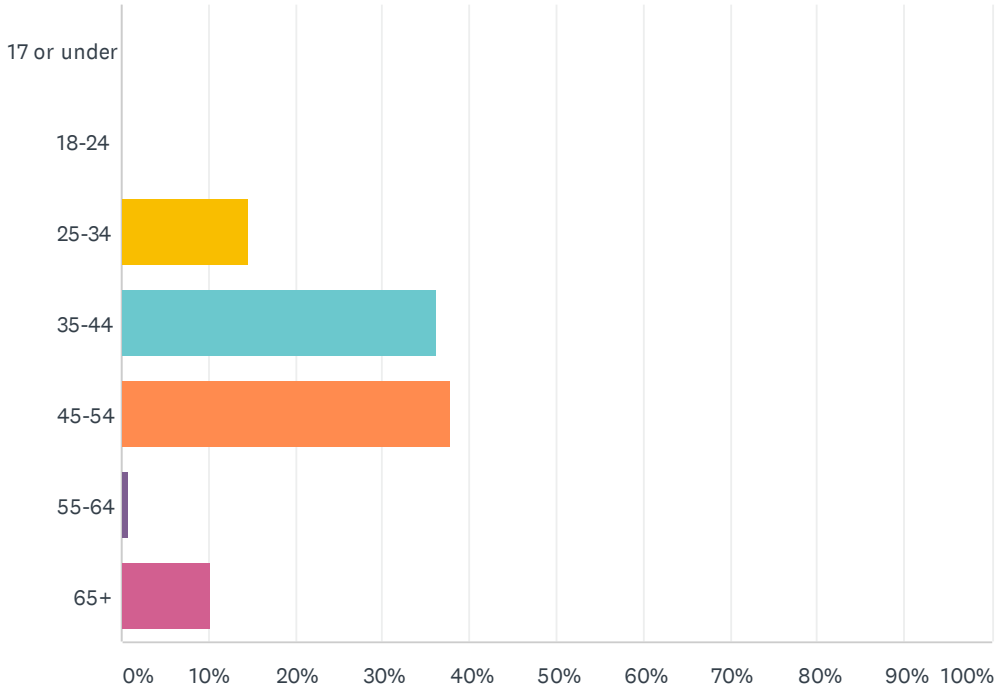
Answered: 120 Skipped: 4



ANSWER CHOICES	RESPONSES	
Yes	5.00%	6
No	95.00%	114
TOTAL		120

Q17 What is your age?

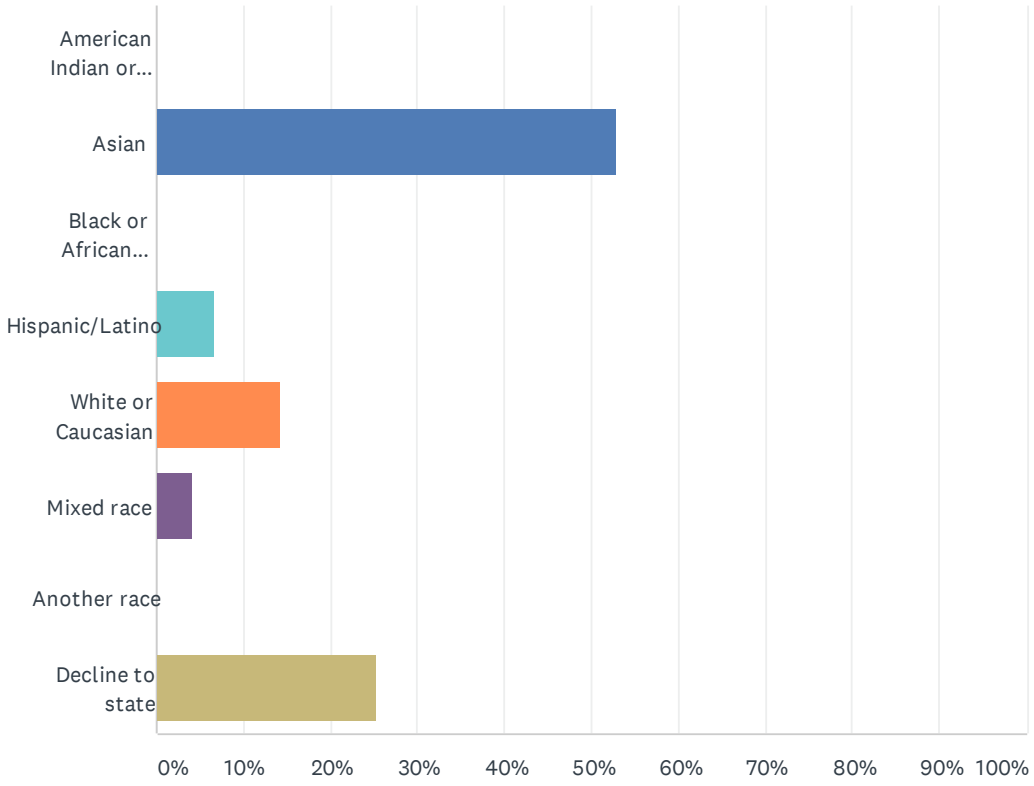
Answered: 116 Skipped: 8



ANSWER CHOICES	RESPONSES	
17 or under	0.00%	0
18-24	0.00%	0
25-34	14.66%	17
35-44	36.21%	42
45-54	37.93%	44
55-64	0.86%	1
65+	10.34%	12
TOTAL		116

Q18 What category best describes your race/ethnicity? (Check all that apply.)

Answered: 119 Skipped: 5



ANSWER CHOICES	RESPONSES	
American Indian or Alaska Native	0.00%	0
Asian	52.94%	63
Black or African American	0.00%	0
Hispanic/Latino	6.72%	8
White or Caucasian	14.29%	17
Mixed race	4.20%	5
Another race	0.00%	0
Decline to state	25.21%	30
Total Respondents: 119		

Q19 Do you have any additional comments?

Answered: 30 Skipped: 94

Q19 Do you have any additional comments?

Answered: 30 Skipped: 94

#	RESPONSES	DATE
1	Ban smoking in parking lots within 25 ft of customers cars.	8/15/2020 1:12 AM
2	In the public park, is it possible to put sign “No Smoking” specially in the parking area near residential area? We smell the tobacco smoke at lunch and dinner time. Thank you	8/1/2020 7:59 AM
3	No	7/30/2020 1:52 PM
4	Teachers, superintendent, school workers, and parents should not smoke of any kind as an example to young generations. They should not support those business for own finance as it tells the young generations that it’s ok to smoke.	7/30/2020 10:48 AM
5	Really troubled with neighbor smoking in their balcony in multi unit community. The smoke comes to our kitchen dining area when we eat food. There are many kids playing around while the person smokes	7/29/2020 11:59 AM
6	Support policy to make Milpitas a city free from secondhand smoke of tobacco and cannabis products!	7/29/2020 11:28 AM
7	I smoke CBD products for my ptsd that has no smell or harm on people around me. At least 5 times a day I am hit with the cigarette smoke smell from my neighbor. Sometimes he will be smoking in our walk way and I’ll wait for him to move to get out of my car.	7/29/2020 10:32 AM
8	I don’t think people should be able to walk any residential area smoking. For example, if my neighbor (nonsmoker) has a party and their friend wants to smoke, that friend goes outside to smoke often times walking around in front of other houses with kids playing outside. They should not be able to do this, if they want to smoke they can sit in their car with the windows up and enjoy it all for themselves.	7/29/2020 10:30 AM
9	This the dumbest survey ever, you can live in a single family home and still answer questions about living multi unit complex.	7/29/2020 9:19 AM
10	we should allow Cannabis sales, and make both Cannabis and tobacco be sold ONLY in those stores [like ABC stores in other regions]	7/29/2020 8:27 AM
11	No weeds smoking that if the odor smelled by others !	7/29/2020 2:38 AM
12	We don't want any kind of smoke products appear in Milpitas. Neither in store nor on street.	7/29/2020 12:03 AM
13	Ban the sales of marijuana and flavored tobacco in Milpitas to keep a healthy Milpitas.	7/28/2020 9:49 PM
14	I oppose any tobacco/marijuana cannabis businesses running in our city. We don't need dirty money to run our Milpitas city. A city with good name will generate good businesses and good home buyers. Bad name attract bad businesses and bad residents. Please stop this endless pushing for cannabis in our Milpitas city. Our job is to protect the city. Don't you agree?	7/28/2020 8:46 PM
15	I support NO Smoking policy in Milpitas	7/28/2020 8:34 PM
16	How to protect the residents in single family house from the second hand smoking from neighbors?	7/28/2020 8:31 PM
17	I request to keep our city clean and free from secondhand smoke (either from tobacco or marijuana products) as Milpitas already badly suffered from the odor of the Landfill !	7/28/2020 7:45 PM
18	question 17 does not have an answer for anyone between the age of 55-64, the age group I am in.	7/28/2020 7:10 PM
19	When I was 3 months pregnant, I kept smelling the smell of marijuana floating outside the window. This smell made me have a headache and couldn't eat anything. But I couldn't find where it came from. There are always so two or three times a week. This makes me very distressed.	7/28/2020 6:40 PM

20	No drug in Milpitas!	7/28/2020 6:15 PM
21	No	7/28/2020 5:52 PM
22	no	7/28/2020 5:50 PM
23	Many neighbors smoke in their back yard.	7/28/2020 5:46 PM
24	Smoking is bad for your health. it increases lung cancer risks...	7/28/2020 5:33 PM
25	Focus on running the city, the City of Milpitas should not be regulating what type of tobacco adults smoke.	7/28/2020 4:29 PM
26	Smoking in Schools is already prohibited although no to little enforcement. Bathrooms are a popular area for students to vape and smoke yet Administration is not handling the issue effectively.	7/28/2020 12:53 PM
27	Ban and enforcement of tobacco use anywhere on a school premises, including parking lots and adjoining 25-ft perimeter.	7/28/2020 12:51 PM
28	Neighboring multi family units near our street of single family homes and neighbors that smoke outside their homes especially at night are concerning, when during summer months we keep our windows open.	7/28/2020 9:56 AM
29	If restrictions go into place, it will be hard to enforce.	7/28/2020 7:04 AM
30	With kids under 18 in neighbours should be ban marijuana smoking in surrounding area.	7/24/2020 10:29 PM

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Authorize City Manager to Execute the Fourth Amendment to the Franchise Agreement with MSI for the purpose of Assignment of Contract and Modify Certain Service Provisions (Staff Contact: Tony Ndah, Public Works Director, 408-586-2602)**
Category:	Community Services and Sustainable Infrastructure
Meeting Date:	6/21/2022
	Recommendation: Authorize City Manager to Execute the Fourth Amendment to the Franchise Agreement with MSI for the purpose of Assignment of Contract and Modify Certain Service Provisions

Background:
On November 16, 2016, the City Council approved the Franchise Agreement between the City of Milpitas and Milpitas Sanitation, Inc. for Collection of Solid Waste and Collection and Processing of Recyclable Materials and Organic Materials (Franchise Agreement). The terms of the agreement allow for the assignment of the obligations of the agreement with consent of the City.

On October 19, 2021, Milpitas Sanitation Inc. (MSI) submitted a request for the City to consider an assignment of the franchise agreement to Waste Connections, Inc.(Waste Connections), a large national solid waste company, with headquarters in and has headquarters in Woodlands, Texas and Vaughan, Ontario. MSI and Waste Connections planned on entering a Securities Purchase Agreement at a closing date to be held on or about December 31, 2021 and sought Council approval per the terms of the agreement to assign the franchise agreement to Waste Connections.

On December 14, 2021, the City Council considered the assignment of contract and the proposed Fourth Amendment to the Franchise Agreement with MSI. During Council discussion of the agenda item, Councilmembers expressed interest in exploring options for increased competition for the contract assignment and wanted to advocate for increased service enhancements; as such, the majority of Council voted to reject the Assignment of Contract and the Fourth Amendment to the Franchise Agreement. It is important to note that the agreement with MSI does not provide for a competitive contract assignment process and the agreement can only be terminated if the City determines that MSI is in default and requires a cure process to address the event of default.

This item is being brought back to Council for consideration as MSI has been in discussion with Mayor Tran and has proposed additional service enhancements as part of its second request for the assignment of contract submitted on May 26, 2022.

Analysis:
Per the terms of the agreement with MSI for solid waste services in the City, MSI submitted a formal request to the City on October 19, 2021 and resubmitted it on May 26, 2022 to consider an assignment of the franchise agreement to Waste Connections. Assignment is the transfer of an agreement's obligations and benefits from one party to another party. Section 12.6 of the Franchise Agreement specifies the process of contract assignment, which includes that prior City consent is required, defining what constitutes an assignment, laying out what is required for consent of assignment. Specifically, Section 12.6.A states:

> "Contractor shall not assign its rights or delegate or otherwise transfer any or all of its obligations under this Agreement to any other Person without the prior written consent of City which may be withheld with or without cause at the City's sole discretion. City may refuse to consent to a proposed assignment unless it is satisfied that the proposed assignee is ready, willing, and able to provide services in a manner equal to or better than Contractor."

Per Section 12.6.C of the agreement, no consent to an assignment need be considered by City unless or until Contractor has met the following requirements:

- Contractor shall submit a non-refundable deposit to City in the amount of $250,000 to provide City funding for its review of the assignment;
- Contractor shall be granted no opportunity to review or approve proposed agents of the City associated with the assignment process;
- Contractor shall furnish City of audited financial statements of the proposed assignee's operation for the immediately preceding three operating years;
- Contractor shall provide satisfactory proof that the proposed assignee has solid waste management experience at a scale equal to or greater than Contractor and that operations are in compliance with federal, state, and local laws; proposed assignee conducts its operations in a safe and environmentally conscientious manner and in accordance with sound solid waste management practices; and any other information required by City to ensure the proposed assignee can fulfill the terms of the franchise agreement in a timely, safe and effective manner
- Should the City consent to the assignment, Contractor shall make an assignment payment to the City in the amount of 2% of the annual Gross Receipts for the services provided for the most recently completed calendar year, which is estimated at $400,000.

In November 2021, Staff contracted with R3 Consulting Group Inc.(R3) to conduct a thorough financial and operations review of Waste Connections. R3 is a California certified small business that specializes in providing municipal clients with services related to solid waste planning, procurement and negotiation assistance operations and performance review, and financial and rate analysis. R3 has been providing rate review assistance to the City for the past three years and is very familiar with the existing franchise agreement. R3 conducted the financial and operational review of Waste Connections late 2021 and found that from an operational and financial perspective, Waste Connections is qualified to perform the services required by the Franchise Agreement. As part of the assignment request submitted May 26, 2022, staff contacted R3 whether any additional review is needed. R3 still stands behind its attached report dated December 9, 2021 and finds that Waste Connections:

- Understands and is committed to complying with all terms and conditions in the Agreement;
- Has more than 10 years of street sweeping, solid waste, recycling and composting collections
- experience;
- Operates in compliance with all applicable laws and regulations;
- Has an established employee onboarding, training, diversity, and safety program that includes tracking, analyzing, and reporting workers' compensation, and automobile/general liability safety metrics;
- Operates its local landfill in accordance with State Minimum Standards;
- Will manage the current fleet and replace vehicles if necessary for the term of the Agreement;
- Demonstrates a renewed commitment to recycling, environmental, sustainability and community engagement to provide focused resources that address the needs of the City as described in their 2020 Sustainability Report;
- Provides enterprise-class tools and adequate processes, staffing, training including Diversity and upgraded software to deliver effective customer service;
- Was recommended by all jurisdictions contacted during reference checks;
- Is financially capable of performing its duties if assigned the Agreement under consideration. Waste Connections' financial health is within expectations for solid waste companies of its size, which allows it to access considerable lines of credit which may be used in performing services under the Agreement;

- Through Bank of America, Waste Connections has access to over $1 Billion of available liquidity for direct borrowing, subject to certain conditions. Waste Connections is in good standing with Bank of America and is following all covenants related to its credit;
- The acquisition of MSI represents an approximate 0.5% growth in size for Waste Connections, which will be a company with over $5,445 Billion in annual revenue post-assignment; and
- Under this assignment, no changes should be visible to the City or rate payers as Waste Connections will operate MSI as a subsidiary and current personnel, vehicles, and equipment will continue to service the City of Milpitas.

Service Enhancements

As discussed with Council at the December 14, 2021 City Council meeting and in conjunction with the assignment review, staff sought to improve on the services provided by MSI and negotiated with MSI/Waste Connections to make permanent certain service enhancements that our community has experienced as pilot projects and/or requested. MSI/Waste Connections agreed to make certain pilot services permanent and/or start providing additional services that improve on the service experience for our residents with no additional costs to the rate payers for at least 2.5 years for making these enhanced services permanent. These service enhancements/alignments include the following:

- Voucher Program for Self-haul of unwanted items to MSI facilities in Santa Clara (M – F; 8 a.m. to 2:30 p.m.)
- 6 neighborhood cleanup events per year including an additional assignment payment in the amount of $150,000 to cover the cost for City staff time supporting neighborhood cleanup events and responding to illegal dumping.
- Increase Curbside Pickup of Bulky Items Collected from One to Three Items per year
- Collect Flattened Cardboard on the side of carts
- Offer dedicated garbage and food scarps cart option as an alternative to the current large split garbage/food scraps cart
- Re-alignment of total streets sweeping curb miles
- Increase compost giveaways for the community

The majority of the City Council voted to reject the assignment of contract and fourth amendment to the Franchise agreement at the December 14, 2021 City Council meeting. After further discussions with Mayor Tran, MSI continued to commit to the staff negotiated service enhancements as well as the two service changes outlined below:

- At City's request, increase neighborhood cleanup events up to 12 events per year based on utilization and participation by the community. Additionally, City and Contractor will monitor services to ensure compliance with applicated State waste diversion laws, and
- Eliminate the use of the two white 1.5 cubic yard bags available for Bulky Item Collection and instead allow residents who request Bulky Item Collection to set out up to 3 cubic yards of materials in the equivalent number of 96-gallon trash bags, which is about 6 bags

Milpitas rate payers will benefit from the service enhancements, estimated to be worth more than $552,000 annually, or close to $1.4 million for 2.5 years.

Policy Alternatives:

Alternative 1: Do not consent to the assignment of the Franchise Agreement.

Pros: None.
Cons: City would forego the one-time assignment payment revenue (estimated at approximately $550,000) and any making any service enhancements permanent would need to be considered as part of the rate process with costs to be paid by solid waste rate payers.

Reason not recommended: City and solid waste rate payers will receive significant financial and service enhancement benefits as a result of the conditions that have been agreed to as a part of this consent of assignment of the Franchise Agreement.

Fiscal Impact:
There is no fiscal impact associated with the execution of this amendment. MSI has agreed to absorb the costs associated with the outlined service enhancements for at least the next 2.5 years.

Per the terms of the agreement, MSI provided the City with a non-refundable deposit of $250,000 to cover the City's cost for the review of the assignment. These funds were deposited with the City on October 25, 2021 and have been used to cover City staff and R3 cost for the review of the assignment. Remaining funds left over from deposit will be transferred into the Solid Waste fund to offset future staff cost.

In addition, per the terms of the agreement, MSI will be making an assignment payment to the City in the amount of 2% of the annual Gross Receipts (estimated at approximately $400,000) for the services provided for the most recently completed calendar year. MSI has also agreed to provide the City with an additional assignment payment of $150,000, which will be used to pay for staff time managing neighborhood cleanup events and in response to illegal dumping.

California Environmental Quality Act:
The City Council's approval of the Consent of Assignment of the Franchise and approval of the Fourth Amendment to the Franchise Agreement is not a project subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guideline 15378(b)(2) as it constitutes an administrative activities of governments that will not result in direct or indirect physical changes in the environment, and is therefore exempt from CEQA review.

Recommendation:
Authorize City Manager to Execute the Fourth Amendment to the Franchise Agreement with MSI for the purpose of Assignment of Contract and Modify Certain Service Provisions

Attachments:
1. Review of Assignment of MSI Agreement to Waste Connections Report by R3
2. Assignment and Consent Agreement
3. Revised Fourth Amendment to Franchise Agreement

FINAL REPORT

City of Milpitas

Review of Assignment of Milpitas Sanitation Franchise Agreement to Waste Connections

Submitted electronically: December 9, 2021

R3 CONSULTING GROUP, INC.

RESOURCES · RESPECT · RESPONSIBILITY

R3 CONSULTING GROUP, INC.
RESOURCES · RESPECT · RESPONSIBILITY

December 9, 2021

Ms. Elaine Marshall
City of Milpitas, Public Works Department
1265 North Milpitas Boulevard, Milpitas, CA 95035
submitted via email: emarshall@ci.milpitas.ca.gov

Subject: Final Report – City of Milpitas Review of Assignment of MSI Franchise Agreement to Waste Connections

Dear Ms. Marshall,

R3 Consulting Group, Inc. (R3) is pleased to submit to the City of Milpitas (City) the attached Final Report of our review of the proposed assignment of the solid waste franchise agreement currently held by Milpitas Sanitation, Inc. (MSI) to Waste Connections (WC or Company) (collectively, "Companies").

This report presents our findings, based on the information made available by the Companies. We initially submitted the report in draft form (to confirm the adequacy of the report for the City to consider the request, by MSI, to assign the agreement to WC) and are now submitting the final version. The Companies were very responsive to all information requests.

To summarize the findings to date:

- Although WC will be the new owner of MSI, MSI as a subsidiary will remain intact and will be obligated to meet all current obligations under the franchise agreement;
- WC's extensive national and statewide operational experience qualifies the Company to provide services under the agreements;
- WC's financial resources are significant and can more than meet the obligations of the agreements, including any future vehicle and equipment capital replacements should they be necessary;
- A new senior management team is in place and will oversee the MSI operation;
- As part of the Assignment, WC has expressed a willingness to absorb the proposed rate increase for Year 5 as well as defer the costs of additional service enhancements until a future detailed rate review; and
- Unlike many assignments, no changes should be visible to the City or its rate payers.

* * * * * * *

Thank you for the opportunity to help the City in considering assignment of the MSI agreement to WC. Should you have any questions or comments, or need any additional information, please don't hesitate to reach out directly.

Sincerely,

Scott Hanin | *Project Director*
R3 Consulting Group, Inc.
916.782.7821 | shanin@r3cgi.com

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3. 2020 Sustainability Report
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1. EXECUTIVE SUMMARY

Introduction

The City of Milpitas has received a request from Milpitas Sanitation, Inc (MSI) to assign the Franchise Agreement to Waste Connections, Inc., a large national solid waste company. MSI and Waste Connections plan on entering into a Securities Purchase Agreement, (the "Purchase Agreement") at a closing to be held on or about December 31, 2021. In accordance with the Draft Purchase Agreement, the current shareholders of MSI will sell all the shares in the Company to Waste Connections, which will result in a change in majority control of MSI from the current owners to Waste Connections.

The City of Milpitas has engaged R3 Consulting Group, Inc. (R3) to conduct a review of the fitness of Waste Connections on behalf of the City, to establish findings regarding the proposed assignment.

This review included a thorough assessment of:

- Franchise Agreement assignment provisions;
- Financial Statements, Annual Reports, SEC Filings, available capital resources and debt;
- Financial and operational information provided by MSI and Waste Connections; and
- Likely effects of assignment on rates and services. Re

R3 was not able to review the final Purchase Agreement as it has not yet been signed by the parties. However, we have no reason to believe the final signed Purchase Agreement will have any material impact on the Assignment and be in substantially the same form as the draft that was provided.

What is the Securities Purchase Agreement?

According to the Draft Purchase Agreement, upon the sale closing, MSI shall continue to possess all its right, title and interest in the Franchise Agreement. MSI will perform and be bound by all the terms, covenants and conditions required under the Franchise Agreement upon closure. Unlike other assignments where effectively a new company replaces the current one as witnessed through name change, new or painted vehicles and changes to personnel, no changes should be visible to the City or its rate payers.

Waste Connections, through this transaction, would now own all assets and agreements of MSI including:

- Permits;
- Franchise agreement;
- Any other agreements for services;
- All equipment used by MSI, including:
  - All customer carts;
  - All containers and bins; and
  - Software, spare parts, computers, etc.
- All motor vehicles used by MSI:
  - Collection and Street Sweeping Vehicles, all of which are subject to replacement by Waste Connections prior to the end of the Agreement; and
  - Support Vehicles.
- All real property used in the business.

What is the Assignment?

Assignment is the transfer of an agreement's obligations and benefits from one party to another party. In this case, MSI is seeking to assign its obligations and benefits under the Agreement between the City and MSI to Waste Connections Inc. The current MSI Agreement requires that MSI obtain City consent to

assign the Agreement, without the prior written consent of City which may be withheld with or without cause at City's sole discretion, for the assignment to Waste Connections to be valid.

Consent Requirements. Per the Agreement, no request by Contractor for consent to an assignment need be considered by City unless and until Contractor has met the following requirements:

1. Contractor shall pay City its reasonable expenses for attorneys' fees, consultants' fees and other costs of investigation necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment. With its written request for consideration of assignment, Contractor shall submit a non-refundable deposit to City in the amount of $250,000 to provide City funding for its review of the assignment;

   It is our understanding this payment was made to the City.

2. Contractor shall be granted no opportunity to review or approve proposed agents of the City associated with assignment process;

   It is our understanding that the City selected R3 for this engagement without any input from MSI or Waste Connections.

3. Contractor shall furnish City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years. City, following review of financial health of the assignee, may require provision of additional performance surety, or insurance;

   Both Waste Connections and MSI's financial statement for the last three years were made available to the City as well as cash flow statement, debt and outstanding capital, balance sheet, Sustainability Plan and Annual Reports and recent SEC filings. No additional surety or insurance has been requested or deemed necessary.

4. Contractor shall furnish City with satisfactory proof: (i) that the proposed assignee has at least ten (10) years of Solid Waste Transfer and Disposal management experience on a scale equal to or exceeding the scale of operations conducted by Contractor under this Agreement; (ii) that in the last five (5) years, the proposed assignee has not been the subject of any administrative or judicial proceedings initiated by a federal, State or local agency having jurisdiction over its operations due to an alleged failure to comply with federal, State or local laws or that the proposed assignee has provided City with a complete list of such proceedings and their status; (iii) that the proposed assignee conducts its operations in a safe and environmentally conscientious manner; (iv) that the proposed assignee conducts its operations in accordance with sound Solid Waste management practices in full compliance with all federal, State and local laws regulating the Transfer and Disposal of Solid Waste and all Environmental Laws; (v) of any other information required by City to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner; and,

   Waste Connections has stated in its Assignment request to the City that it is complying with all of terms of this Section and the R3 review concurs based on our review.

5. Any permitted assignee must assume Contractor's responsibilities under this Agreement.

   As described in the report, this share purchase will maintain MSI with day-to-day responsibility for compliance with the current Agreement and Waste Connections as new parent shall be required to ensure compliance with all franchise agreement terms.

6. Should City consent to the assignment, Contractor shall make an assignment payment to the City in the amount of 2% of the annual Gross Receipts for the services provided under this Agreement for the most recently completed calendar year.

   Waste Connections has represented to the City that this payment will be made to the City upon approval of the Assignment by the City.

Waste Connections has stated, and it is described in the Draft Purchase Agreement, that as a purchase of ownership shares, rather than a typical asset purchase, MSI management will essentially remain in place to comply with the current franchise agreement requirements as is currently the case, however, MSI management will now report to Bret Faulkner – District Manager. Bret Faulkner has been District Manager overseeing the Green Team of San Jose, Santa Clara County and West Valley Cities hauling operations beginning in 2014. An organizational chart is included as **Attachment 1**.

Waste Connections' Qualifications for Assignment

Section 2 of this Report provides R3's review of Waste Connections' audited financial statements and many other financial documents including current cash flow and access to capital. R3 requested a Good Standing letter from Bank of America (**Attachment 2**) which is Waste Connections' primary creditor. This is followed by Section 3, which provides R3's assessment of Waste Connections' fitness to perform the activities covered under the Agreements. Specifically, we have reviewed Waste Connections' qualifications to perform services currently provided by MSI, the services provided under other current Agreements with other jurisdictions, and responses to questions submitted by R3 demonstrating ability to meet terms and conditions of the agreements.

The general qualification areas reviewed by R3 are as follows:

- Financial Ability;
- Collection and Street Sweeping Operations;
- Staffing;
- California Qualifications;
- Safety and Employee Engagement;
- Customer Service;
- Community Engagement; and
- References.

Overall, from an operational and financial perspective, R3 finds that Waste Connections is qualified to perform services required by the Franchise Agreement. Specifically, we find that Waste Connections/MSI:

- Understands and is committed to complying with all terms and conditions in the Agreement;
- Has more than 10 years of street sweeping, solid waste, recycling and composting collections experience;
- Operates in compliance with all applicable laws and regulations;
- Has an established employee onboarding, training, diversity, and safety program that includes tracking, analyzing, and reporting workers' compensation, and automobile/general liability safety metrics;
- Operates its local landfill in accordance with State Minimum Standards;
- Will manage the current fleet and replace vehicles if necessary for the term of the Agreement;
- Demonstrates a renewed commitment to recycling, environmental, sustainability and community engagement to provide focused resources that address the needs of the City as described in their 2020 Sustainability Report (**Attachment 3)**;
- Reporting will continue to be provided in a timely manner as described in the Agreement;
- Provides enterprise-class tools and adequate processes, staffing, training including Diversity and upgraded software to deliver effective customer service;
- Was recommended by all jurisdictions contacted during reference checks;

- Is financially capable of performing its duties if assigned the Agreement under consideration. Waste Connections' financial health is within expectations for solid waste companies of its size, which allows it to access considerable lines of credit which may be used in performing services under the Agreement;
- Through Bank of America, Waste Connections has access to over $1 Billion of available liquidity for direct borrowing, subject to certain conditions. Waste Connections is in good standing with Bank of America and is following all covenants related to its credit;
- The acquisition of MSI represents an approximate .5% growth in size for Waste Connections, which will be a company with over $5,445 Billion in annual revenue post-assignment; and
- For shareholders, 2020 was Waste Connections' 17th consecutive year of positive total shareholder returns, with double-digit percentage returns, and the tenth consecutive year of double-digit percentage increases in its cash dividend. Its comparative performance over the five-year period ending December 31, 2020, continued to outperform sector and market indices.

Management Style and Approach

As described in its public reporting, Waste Connections manages its operations on a decentralized basis. This places decision-making authority closer to the customer, enabling it to identify and address customers' needs quickly in a cost-effective manner. The Company believes that decentralization provides a low-overhead, highly efficient operational structure that allows it to expand into geographically contiguous markets and operate in relatively small communities that larger competitors may not find attractive. They believe that this structure gives it a strategic competitive advantage, given the relatively rural nature of many of the markets in which it operates, and makes it an attractive buyer to many potential acquisition candidates.

Each operating location has a district or site manager who has a high degree of decision-making authority for his or her operations and is responsible for maintaining service quality, promoting safety, implementing marketing programs, and overseeing day-to-day operations, including contract administration. Local managers also help identify acquisition candidates and are responsible for integrating acquired businesses into its operations and obtaining the permits and other governmental approvals required for it to operate.

As of December 31, 2020, their employee population consisted of 18,933 active employees, 9,788 of whom are commercial truck drivers and 1,610 of whom are mechanics. There were 15,978 employees located in the United States and 2,955 employees located in Canada. 39% of the employees were ethnic minorities, 16% were women, and 8% were from the armed services.

The Company believes that acquisitions are an integral strategy for its growth. The Company has closed 14 acquisitions so far this year to date, worth approximately $115 million in annualized revenue. During the year ended December 31, 2020, it completed 21 acquisitions having a net value of $481.6 million. During the year ended December 31, 2019, it completed 21 acquisitions having a net value of $837.7 million. During the year ended December 31, 2018, it completed 20 acquisitions having a net value of $1.032 Billion.

Potential Rate Impacts of Assignment

As part of the Assignment review, Waste Connections has agreed to absorb the 0.57% rate increase that was due MSI for rate year 5. Additionally, they have agreed to absorb the cost of several additional service enhancements until a detailed review in three years when the actual costs will be known and included going forward. Waste Connections has also agreed to increase the assignment payment by $150,000.

2. FINANCIAL ABILITY

To evaluate Waste Connections' financial ability to perform services covered under the Agreement, R3 reviewed the following:

- Waste Connections' audited financial statements for 2018 through 3rd Qtr. 2021;
- SEC 10-K filings for 2019 through 3rd Qtr. 2021;
- Cash flow and debt reports;
- Balance Sheet;
- MSI audited financial statements for 2018 through 2020; and
- Good Standing Letter from Bank of America.

Key Findings

- Waste Connections is financially capable of ensuring the performance of all aspects of the Franchise Agreement if assigned the Agreement under consideration. Waste Connections' financial health is within expectations for solid waste companies of its size, which allows it access to sufficient lines of credit which may be used to secure capital necessary for providing services under the Agreements;
- Per Bank of America as both Global and US lending Agent, Waste Connections has access to over $1 Billion of available liquidity for direct borrowing, subject to certain conditions. Waste Connections is in good standing with Bank of America and is following all covenants related to its credit; and,
- The acquisition of MSI's assets, Agreement revenues, and operational obligations represents an approximate .5% growth in size for Waste Connections, which will be a company with over $5,445 Billion in annual revenue post-assignment.

Financial Health

Our review of Waste Connections' financial statements indicates that Waste Connections is a profitable company (10.1% profit), with sufficient levels of revenue to cover its expenses. Waste Connections' average debt-to-equity ratio (73%) is appropriate for capital intensive industries such as solid waste collection. The MSI share purchase represents 0.07 percent of Waste Connections' overall market capitalization of $35.42 Billion, meaning that additional income, expenses and debt relating to the asset purchase will be a minor impact to Waste Connections' overall financial health. In terms of annual income, the Company's annual revenue is approximately $5.4 Billion with adjusted net income of $700 million as shown below:

Waste Connections Summary Income Statement (000's)

	2019	2020
Revenue	5,388,679	5,445,990
Adjusted EBITDA*	1,673,554	1,661,984
Net income attributable to Waste Connections	566,841	204,677
Adjusted net income attributable to Waste Connections*	719,561	695,786

*Non-GAAP measure. See Non-GAAP Measures on pages 75-77 of Annual Report on Form 10-K for the year ended December 31, 2020.

For the year ended December 31, 2020, revenue was $5.446 Billion, as compared to $5.389 Billion in the prior year. R3 has also evaluated common financial ratios that lending institutions use to determine financial health and fitness for lending. These ratios are guidelines that financial institutions refer to when making determinations regarding lendability.

The Company has a Current Ratio of 1.0 and a Quick Ratio of 0.9. The current ratio is a liquidity ratio that measures a company's ability to pay short-term obligations or those due within one year. It tells investors and analysts how a company can maximize the current assets on its balance sheet to satisfy its current debt and other payables. A ratio under 1.00 indicates that the Company's debts due in a year or less are greater than its assets—cash or other short-term assets expected to be converted to cash within a year or less.

The quick ratio measures the dollar amount of liquid assets available against the dollar amount of current liabilities of a company. A result of 1 is the normal quick ratio. It indicates that the Company is fully equipped with exactly enough assets to be instantly liquidated to pay off its current liabilities. A company that has a quick ratio of less than 1 may not be able to fully pay off its current liabilities in the short term, while a company having a quick ratio higher than 1 can instantly get rid of its current liabilities. Although slightly less than 1, the Quick Ratio is more conservative, and the number is still quite strong.

R3 has found that these ratios indicate that Waste Connections' liquidity is appropriate for the purposes of assignment consideration.

Debt

As shown below in the Company's financial reports, Waste Connections has access to over $1.2 Billion in liquid capital to perform its contractual obligations, including the replacement of vehicles and containers, if necessary, before the end of the Agreement, although not currently under consideration. It is also our understanding that Waste Connections anticipates paying off the outstanding loans shown below this calendar year.

Available Credit

	9/30 2021	***12/31 2020***
Revolver under Credit Agreement Available	*$ 1,100,391*	*$ 1,238,937*
Letters of credit outstanding	*$ 114,685*	*$ 119,636*
Total amount drawn, as follows:		
Amount drawn - U.S. LIBOR rate loan	*$ 634,924*	*$ 203,927*
Interest rate applicable - U.S. LIBOR rate loan	*$ 631,000*	*$ 200,000*
Amount drawn – Canadian bankers' acceptance	*1.09%*	*1.35%*
Interest rate applicable – Canadian bankers' acceptance	*$ 3,924*	*$ 3,927*
Commitment – rate applicable	*1.43%*	*1.66 %*
Term loan under Credit Agreement	*0.09%*	*0.15 %*
Amount drawn – U.S. based LIBOR loan	*$ 650,000*	*$ 650,000*
Interest rate applicable – U.S. based LIBOR loan	*1.09%*	*1.35%*

Overall, because of Waste Connections' size, the Company brings to the City much more financial stability, access to capital and depth. Nothing we have seen or has been reported shows any change in the Company's financial health in the future.

3. OPERATIONAL QUALIFICATIONS

Waste Connections/MSI will still be required to operate in full compliance with the terms and conditions of the Agreement. R3 reviewed the terms and conditions of the Franchise Agreement, as well as financial statements and Annual Plans provided by Waste Connections, to determine Waste Connections' qualifications and abilities to fulfill those terms and conditions. In the Greater Bay Area, Waste Connections has two operating locations. Green Team of San Jose, which has single family and multifamily franchise agreements with the City of San Jose. Also, Potrero Hills Landfill which is in Solano County and accepts waste for disposal and processing from a multi-county area in Northern California.

The Company's national operations primarily consist of providing non-hazardous waste collection, transfer, disposal and recycling services, exploration & production (E&P) services, and intermodal services. This size and breadth of experience shows that Waste Connections has the capability to provide all the services required under the Franchise Agreement.

The following tables disaggregates the Company's revenues by service line for the periods indicated and the following shows the number of facilities by line of business:

Revenues by Service Area (000's)

Years Ended 12/31	/2018	/2019	/2020
Commercial	$1,452,831	$1,610,313	$1,593,217
Residential	1,189,148	1,528,217	1,380,763
Roll off	841,173	768,687	833,148
Total Collection	3,410,666	3,971,678	3,815,153
Landfill	1,132,935	1,063,243	1,146,732
Transfer	670,129	777,754	771,316
Recycling	64,245	86,389	92,634
E&P	271,887	256,262	159,438
Intermodal and other	118,396	121,137	139,896
Intercompany	(709,889)	(814,397)	(787,994)
TOTAL	**$5,388,679**	**$4,922,941**	**$5,445,990**

Facilities by Service Area

Hauling Operations	311
Landfills	92
Transfer Stations	185
Intermodal Facilities	6
Recycling Facilities	68
E&P Liquid Waste Injection Wells	23
E&P Waste Treatment and Oil Recovery	19
TOTAL	**704**

Collection and Street Sweeping Operations

Collection and street sweeping operations are the primary operational requirements under the Agreement, and Waste Connections needs to demonstrate adequacy in providing these services to be deemed fit for assignment. To evaluate Waste Connections' qualifications and fitness to perform collections and street sweeping services, R3 reviewed:

- MSI Annual Reports to determine nothing in there was beyond the scope of Waste Connections;
- List of California operations and assets;
- Waste Connections Sustainability Report; and
- Waste Connections Northern California Organization Chart (**Attachment 1**);

Based on their national and statewide size and experience in all aspects of solid waste management, their depth, training, California Operations, and safety program make them qualified operationally to perform the services required by the franchise agreement.

Staffing

According to Waste Connections, the current General Manager of Milpitas Sanitation, Inc., Mr. Sal San Filippo, will continue to manage the day-to-day operations of Milpitas Sanitation, Inc. Mr. San Filippo will report to Mr. Bret Faulkner, the District Manager for Waste Connections of California, Inc. d/b/a GreenTeam of San Jose. Mr. Faulkner, in turn, reports to Mr. Paul Nelson, the Division Vice President for Waste Connections of California, Inc. Mr. Nelson, in turn, reports to Mr. Dan Schooler, the Regional Vice President for the Western Region of Waste Connections, Inc.

Descriptions of Key Waste Connections staff are as follows:

Dan Faulkner – District Manager. Prior to the Green Team, Mr. Faulkner was District Manager of San Luis Obispo beginning in 2010. He has more than 15 years of experience in the solid waste industry and over 35 years of experience in the transportation industry. He holds a degree in finance from the University of Wisconsin-Milwaukee.

Paul Nelson – Division Vice President. Paul Nelson has been Division Vice President overseeing the Bay Area Division since 2006. Prior to that, Mr. Nelson was District Manager of Green Team of San Jose beginning in 2002. Mr. Nelson has more than 32 years of experience in the solid waste industry and holds a B.S. degree in Business Administration from the University of California, Berkeley.

Dan Schooler – Regional Vice President. Dan Schooler has been the Western Region Vice President for Waste Connections since February 2018, with oversite for eighty-six companies within eight states including Alaska, Washington, Oregon, California, Nevada, Idaho, Montana, and Western Wyoming. From November 2008 to that date, Mr. Schooler served as Division Vice President with responsibility for multiple companies in Washington State from 2008 to 2011, multiple companies in the State of New York from 2011 to 2013 and multiple companies again in Washington State from 2013 to 2018. From June 2001 to November 2008, Mr. Schooler managed a large hauling, transfer and recycling operation in Vancouver, Washington. Mr. Schooler joined Waste Connections in September 1999 as a controller managing the finances of several companies in Oregon and Washington, with a focus on day-to-day operations and mergers and acquisitions. Prior to joining Waste Connections, Mr. Schooler held various operations and controller positions and has over 32 years of experience in the solid waste industry. He holds a B.S degree in Accounting from Valparaiso University.

California Qualifications

Waste Connections, Inc. and its subsidiaries have been providing municipal solid waste and recycling collection, disposal, and processing services in the United States since 1997 and in California since 1998. Waste Connections, through various operating subsidiaries, currently provides solid waste and recycling collection services in the following municipalities in California, all of which are required to comply with AB 939 and SB 1386.

Because of this, the City has much more access to statewide expertise and programs being implemented by the Company elsewhere to gain more expertise that can be used locally. The Company is also in the process of acquiring Garden City Sanitation which services parts of San Jose.

California Municipality Served	Waste Connections Subsidiary
Avila Beach Community Services District	South County Sanitary Service, Inc.
Bishop, City of	Preferred Septic & Disposal, Inc.
Cambria Community Services District	Mission Country Disposal
Cameron Park Community Service District	WC of California, Inc. d/b/a El Dorado Disposal Service
Campbell, City of	West Valley Collection & Recycling, LLC
Clearlake, City of	Clearlake Waste Solutions, Inc.
El Dorado County	WC of California, Inc. d/b/a El Dorado Disposal Service
El Dorado Hills Community Service District	WC of California, Inc. d/b/a El Dorado Disposal Service
Grover Beach, City of	South County Sanitary Service, Inc.
Inyo County	Madera Disposal Systems, Inc. d/b/a Bishop Waste Disposal
Inyo County	Preferred Septic & Disposal, Inc.
Lake County	Lake County Waste Solutions, Inc.
Lassen County	C&S Waste Solutions of Lassen County, LLC
Los Gatos, Town of	West Valley Collection & Recycling, LLC
Los Osos Community Services District	South County Sanitary Service, Inc.
Mammoth Lakes, Town of	Mammoth Disposal Company
Mono County	Mammoth Disposal Company
Monte Sereno, City of	West Valley Collection & Recycling, LLC
Morro Bay, City of	Morro Bay Garbage Service
Nipomo Community Services District	South County Sanitary Service, Inc.
Oceano Community Services District	South County Sanitary Service, Inc.
Placerville, City of	WC of California, Inc. d/b/a El Dorado Disposal Service
Red Bluff, City of	WC of California, Inc. d/b/a Green Waste of Tehama
San Jose, City of	WC of California, Inc. d/b/a GreenTeam of San Jose
San Luis Obispo, City of	San Luis Garbage Company
San Luis Obispo, County of	South County Sanitary Service, Inc.
Saratoga, City of	West Valley Collection & Recycling, LLC
Tehama County	WC of California, Inc. d/b/a Green Waste of Tehama
Ukiah, City of – Hauling	Ukiah Waste Solutions, Inc.
Ukiah, City of – Transfer	Solid Waste Systems, Inc.

Safety and Employee Engagement

Safety is critical to an effective solid waste management operation. It impacts cost, customer service, employee morale, and other factors. Our experience has been that a company that has an effective focus on safety tends to pay attention to the other aspects of its operation.

As reported by the Company, in 2020, their behavior-based approach to safety resulted in a reduction in the incident rate by approximately 12%, with over 60% of its operating locations posting zero safety-related incidents or reduced incident frequency over the prior year. To reinforce safe driving skills and safe work practices throughout Waste Connections, they require both initial training for all new driver employees and reinforcement training each year.

Areas of focus in training include: “Target 4” defensive driving, Smith System driving fundamentals, Injury & Illness prevention, and Safe Work Practices training. They further emphasize the importance of safety through regular tailgate safety meetings and rollout safety instructions for its drivers, and through the utilization of electronic safety communication boards, safety alerts, and other communications to heighten awareness and maintain focus every day on the importance of safety. While they attribute the successful safety record to the culture and behavior-based approach, they recognize that advances in fleet design and technology can be important tools in identifying risky behaviors and providing coaching opportunities to further their efforts to achieve the long-term aspirational target of a 25% reduction in incident rates as described in the 2020 Sustainability Report (**Attachment 3**). (www.wasteconnections.com/sustainability).

To that end, in 2020, they initiated a two-year, $10 million fleet-wide upgrade of its on-board event recording technology and introduced Freightliner EconicSD trucks with an overhauled cab design that incorporates many of the safety features already included in passenger vehicles, as well as an integrated collision mitigation system, enhanced visibility, and several ergonomic improvements.

Waste Connections expanded their training programs to increase employee knowledge and awareness toward increasingly important subjects such as Diversity and Inclusion and Cybersecurity. In 2020, they deployed a new Learning Management System ("LMS") to expand their reach to additional employees and provide mobile and tablet-based trainings. The efforts were timely given the need to limit in-class participation during the COVID-19 pandemic and this significantly increased both course count and employees that participated in training courses. A copy of their Health & Safety Policy Statement is included as **Attachment 4**.

Waste Connections has established safety programs that includes tracking, analyzing, and reporting workers' compensation, and automobile/general liability safety metrics. An electronic record is maintained of the dates, topics, locations, and participants of all Waste Connections training events. An overview of their Preventative Maintenance Program is included as **Attachment 5.**

Self-Insurance

Waste Connections is self-insured for its workers' compensation risk that covers workers injured on the job. Claims above $1 million are fully insured to limit the exposure and risk. Because it is self-insured, Waste Connections does not have an experience modification factor generated by external rating agencies or its excess workers' compensation carrier. As described in its Annual Report, because of its insurance policies, the Company is effectively self-insured for automobile liability, general liability, employer's liability, environmental liability, cyber liability, employment practices liability, and directors' and officers' liability as well as for employee group health insurance, property and workers' compensation.

The Company's insurance accruals are based on claims filed and estimates of claims incurred but not reported and are developed by the Company's management with assistance from its third-party actuary and its third-party claims administrator. The insurance accruals are influenced by the Company's past claims experience factors and by published industry development factors.

Employee Recruiting

In the current environment where finding qualified employees is so difficult, it is important that the Company maintain a comprehensive program. In 2020, Waste Connections hired 4,417 employees through its network of internal recruiters operating on a regional basis out of 10 locations. The internal recruiting team partners with hiring managers to continuously improve efforts with respect to marketing, screening, interviewing, onboarding, and employee retention. In addition to recruiting locally in the communities they serve, Waste Connections uses job fairs, open house events, employee referral programs, social media channels, local radio and television advertising, and school to work partnerships. The job opportunities are hosted on www.careers.wasteconnections.com, posted on www.indeed.com, as well as state and provincial job boards to expand diversity-oriented and military-focused recruiting.

Violations

Using the CalRecycle website, the inspections for their Potrero Hills landfill (the Company's only northern California Facility) were reviewed. While there were periodic minor violations, no enforcement actions have been taken in the last 15 years.

Customer Service

Delivering a positive customer experience is an important goal for solid waste management companies providing services. Customer satisfaction is impacted not just by the quality of the performance of services but also by every touchpoint for the customer, covering a variety of topics over a variety of communication channels. Handling customer interactions effectively and consistently requires adequate technology, staffing, training, processes, and management.

A copy of the Table of Contents for a subsidiary customer service training manual is included as **Attachment 7** to give the reader a sense of the training programs comprehensiveness.

Community Engagement

Waste Connections provides opportunities for their employees to get involved in their communities and to also give back through charitable donations or sponsoring community events. For example:

Giving Locally – Waste Connections and its employees support more than a thousand organizations through direct contributions, volunteering and/or fundraising at a local level. Each year, they donate millions of dollars to various charities, including an increasing number of organizations identified by frontline employees that focus on racial inequities at a local or national level, and that support women and children at risk in disadvantaged communities.

Company-wide Culture of Giving – In 2019, they achieved a 20-year Christmas Promise goal one year ahead of schedule, as employees across the Company assembled and donated over 10,000 bicycles to children, bringing the total donated since inception to approximately 65,000 bicycles. In addition, despite canceling the 2020 Annual Waste Connections Golf Classic for Kids due to COVID-19-related safety concerns, they were able to hold virtual auctions and in aggregate raise over $1 million for charities that support at-risk youth and their families.

Sustainability and Giving – Waste Connections aligns its major financial contributions with its goal to further advance environmental sustainability. For example, the first major grant helped establish the Global Waste Research Institute (GWRI), developed in conjunction with California Polytechnic State University, San Luis Obispo.

As described in its 2020 Annual Report, Waste Connections views its Environmental, Social and Governance ("ESG") efforts as integral to its business, with initiatives consistent with its objective of long-term value creation. In 2020, the Company introduced long-term, aspirational ESG targets and committed over $500 million for investments to meet or exceed such sustainability targets. These investments primarily focus on reducing emissions, increasing resource recovery of both recyclable commodities and clean energy fuels, reducing reliance on off-site disposal for landfill leachate, further improving safety through reduced incidents and enhancing employee engagement through improved voluntary turnover and Servant Leadership scores. For more information, visit the Waste Connections website at www.wasteconnections.com/sustainability.

As described in their 2020 Sustainability Report, Waste Connections believes that sustainability initiatives align with and support the efforts of their customers and the communities they serve. The Company works with customers to increase resource recovery and facilitate their pursuit of *zero waste* goals. Whether providing services like composting of yard waste and food waste or supporting the introduction of new technologies, such as anaerobic digesters, they partner with communities and industrial customers to advance the objective to reduce the reliance on landfills, decrease waste disposal costs and reduce emissions. Their reporting and analytics tool, Recycle 360°, enables customers to develop waste management plans and track ongoing performance against waste education and recycling targets.

References

To determine the satisfaction level of jurisdictions served as well as the services performed under the various Agreements held by Waste Connections, R3 staff contacted other jurisdictions serviced by their subsidiaries. R3 has found that the cities and agencies Waste Connections serves are generally satisfied with Waste Connections' services. 4 of the 4 jurisdictions that answered the question, "Would you recommend Waste Connections?" said "yes". Other jurisdictions have been contacted but responses have not yet been received.

R3 contacted 11 jurisdictions, many of which had been provided by Waste Connections and others which were identified by R3. The tables on the next pages show the meaning of scores assigned to responses from reference jurisdictions, the average scores and other responses to the survey questions and displays the services provided under the agreements between Waste Connections and the various agencies surveyed.

Ratings

KEY	
5	Very Satisfied/Very Confident
4	Somewhat Satisfied/Somewhat Confident
3	Ambivalent
2	Somewhat Dissatisfied/Somewhat Unconfident
1	Very Dissatisfied/Very Unconfident

Summary of Reference Scoring

Question		Rating / Answer
1.	How would you rate your satisfaction with Waste Connections' overall collection service?	4.25
2.	How satisfied are you with Waste Connections' recycling diversion programs?	4.25
3.	How satisfied are you with Waste Connections' organic waste diversion programs?	4.25
4.	How satisfied are you with Waste Connections' collection vehicles and containers used (cleanliness, appearance, etc.)?	4.13
5.	How would you rate your confidence in the validity of information received from Waste Connections?	4
6.	How satisfied are you with the quality and amount of the Waste Connections' education and outreach programs?	4.17
7.	How satisfied are you with Waste Connections' customer service (responsiveness, complaints received, resolution of complaints)?	4.5
8.	Have you ever had to assess liquidated damages?	2 out of 4 said "no"
9.	Has Waste Connections ever asked for non-scheduled and unexpected rate increases?	2 out of 4 said "no"
10.	Would you recommend Waste Connections?	4 out of 4 said "yes"

Services Provided

SERVICE	JURISDICTION			
	San Jose	Mammoth Lakes	Los Gatos	Tehama County
Split-body Collection Vehicles	No	No	Yes	No
Garbage, Recycling, and Green Waste	Yes	Yes	Yes	Yes
Residential Food Scraps	Yes	No	Yes	No
Commercial Food Scraps	Yes	Yes	Yes	No
Curbside Battery Collection	No	No	Yes	Yes
Curbside Motor Oil/Filter Collection	Yes	No	Yes	Yes
Special Event Collection Services	Yes	Yes	Unknown	Yes
Portable Toilet Service for Special Events	No	Yes	Unknown	No
Bulky Waste at Curbside	Yes	No	Yes	Yes
Bulky Waste at Drop-off	Yes	Yes	Yes	Yes
Community Cleanup/Illegal Dumping	Yes	Yes	Yes	Yes
Street Sweeping	No	No	Unknown	Yes
Street Cans	Unknown	Unknown	Yes	Unknown

Some representatives of the jurisdictions surveyed provided the following comments:

- "Waste Connections is an excellent, trustworthy partner, and we have a great working relationship."
- "They're very responsive and have good communication. Green Team (now owned by Waste Connections) still feels like a small hauler."
- "Having Mammoth Disposal connected to a large waste management company means they have good resources and industry knowledge."
- "They are good at addressing collection problems quickly, whether it's their fault or not."
- "In previous years, communication was the biggest problem and I had to work directly with their supervisors to fix issues, such as when complaints were resolved they did not respond to customers to let them know. We also had to work on phone line availability for customer service. They even developed an app for reporting problems but didn't communicate well to customers that it existed. There was a disconnect between staff, managers, and customer service, however these issues have significantly improved the past couple of years, and we haven't had customer complaints about these issues for a while.
- "We just renegotiated the Franchise Agreement but needed no major changes. Waste Connections is enhancing the services already available and there is a new sustainability coordinator to improve outreach and education."
- "I'm very happy with the improvements they have made in communications the last couple of years, even their response during COVID. For example, they automatically reduced services which everyone appreciated during the close downs as it reduced costs for customers. While there have been some transitions issues with going back to normal and we've had to continue to closely manage communications, they have overcome a lot of challenges."
- "So far the transition with SB 1383 has been very positive, with support from our consultant. They have implemented a more robust and impressive outreach system with SB 1383 roll-out, including distribution of free compost bins to residents."

4. TRANSITION ACTIVITIES

Per Waste Connections – This Assignment should be invisible to customers within the City of Milpitas. This is purely a change of shareholder. Waste Connections is taking all existing employees currently providing service to the customers today. We are bound by all terms, conditions, and amendments to the Franchise Agreement with the City of Milpitas.

At approximately (3 to 4) months following the closing, Waste Connections will convert the existing customer billing and interface system to Waste Connections Route Manager® System. We will run this billing side by side with the existing system to ascertain data integrity. This should not affect any customer service or billing.

R3 will provide the City with additional assistance and deliverables related to the transition in the following areas:

- Preparing Franchise Agreement amendments, as necessary;
- Participating in meetings related to the assignment request and any new Waste Connections staff;
- Overseeing transition activities, if necessary;
- Conducting operational performance reviews if requested by City in the future;
- Reviewing additional requests (i.e., rate changes, customer service, billing audits, etc.);
- Assist with staff report for City Council;
- Assist in drafting the City Council resolution accepting, denying, or deferring MSI's request for assignment; and
- If assignment is to be approved, an amendment to the Franchise Agreement accepting assignment, and any other prerequisites to assignment of the Agreement as determined by the City (including provisions in the Agreement that refer to insurance provisions, as Waste Connections is self-insured).

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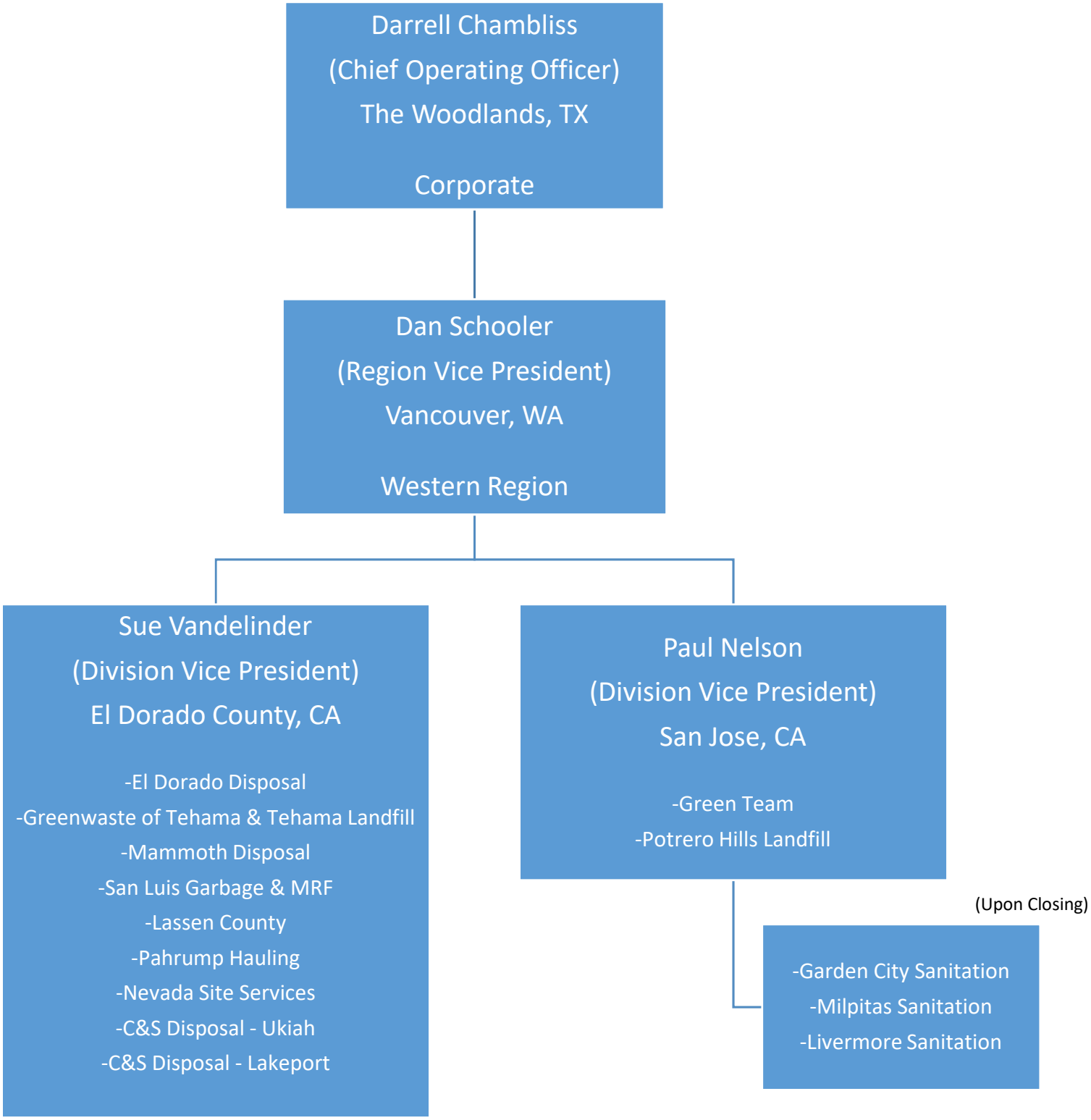
ATTACHMENT 1

Waste Connections Northern California Organization Chart



ATTACHMENT 2

Good Standing Letter from Bank of America

BofA SECURITIES

Timothy Laurion
Managing Director

Environmental Services Corporate Banking
MA5-100-10-18 100 Federal Street
Boston, MA 02110
Timothy.Laurion@bofa.com

November 30, 2021

To: City of Milpitas, CA

Waste Connections has been a client of our bank in good standing for over 20 years. They currently maintain credit facilities of $2.5 billion, with approximately $1.1 billion currently unused and available for borrowing.

The relationship has been handled as agreed in all respects.

Sincerely;

Timothy M. Laurion
Managing Director
Environmental Services Corporate Banking

ATTACHMENT 3

2020 Sustainability Report

ABOUT WASTE CONNECTIONS

Waste Connections is an integrated solid waste services company that provides non-hazardous waste collection, transfer and disposal services, along with resource recovery primarily through recycling and renewable fuels generation. The Company serves more than eight million residential, commercial and industrial customers in mostly exclusive and secondary markets across 44 states in the U.S. and six provinces in Canada. Waste Connections also provides non-hazardous oilfield waste treatment, recovery and disposal services in several basins across the U.S., as well as intermodal services for the movement of cargo and solid waste containers in the Pacific Northwest. For more information, visit Waste Connections at www.wasteconnections.com.

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OUR PURPOSE

Honoring our commitments provides our stakeholders peace of mind and establishes us as the premier waste services company in the markets we serve. This creates a safe and rewarding environment for our employees while protecting the health and welfare of the communities we serve, thereby increasing value for our shareholders.

SUSTAINABILITY INITIATIVES THAT BENEFIT ALL STAKEHOLDERS

ENVIRONMENTAL

Committed to environmental protection, compliance and the advancement of new technologies.

SOCIAL

Investing in our people by enhancing safety, training and inclusion; supporting communities through charitable programs.

GOVERNANCE

Maintaining sound governance policies that align the interests of shareholders with the Board and Management.

LETTER FROM THE CHIEF EXECUTIVE OFFICER

The challenges of 2020 highlighted the critical roles of culture, values and leadership at all levels as we navigated the COVID-19 pandemic within the context of increased focus on environmental and social justice. We are proud of the accomplishments of our 19,000 employees as they met those challenges and drove continuous improvement not only in our business, but also towards our sustainability objectives.

We view efforts to minimize our impact on the environment and drive continuous improvement in employee safety, welfare, engagement and inclusion as integral to our business, driving long-term value creation for all of our stakeholders.

We are proud to report our progress towards achievement of the fifteen-year aspirational sustainability targets we introduced in 2020, as well as other initiatives we have undertaken to further our efforts to address climate change. We achieved an 8% absolute reduction in Scope 1 and Scope 2 emissions in 2020. We also increased our offsets generated from our services provided led by a 7% increase in landfill gas collected and converted to renewable energy and a 5% increase in recycling tons processed. These efforts further improved our net negative carbon footprint, reflecting the benefits of both reducing emissions and increasing our offsets to such emissions. Put simply, through our services offered in 2020, we were able to avoid 18.2 million metric tons of CO2e, a figure that exceeded our emissions generated from operations by over 3.2 times. Going forward, we are well positioned to achieve our aspirational climate-related targets through a growing pipeline of projects under development, including renewable natural gas plants, leachate treatment plants and state-of-the-art greenfield recycling facilities.

In 2020, we also saw a reduction in employee turnover and safety-related incident rates, already below the industry average, plus a further increase in employee engagement. Recognizing

WE HAVE POSITIONED OURSELVES FOR CONTINUED PROGRESS TOWARDS ACHIEVEMENT OF OUR SUSTAINABILITY TARGETS WITH A GROWING PIPELINE OF PROJECTS UNDER DEVELOPMENT

the importance of putting employees first, our safety-focused, servant leadership-based culture guided our decision-making and facilitated our differentiated execution during the COVID-19 pandemic in 2020, and continues to do so. Our ongoing employee support since the onset of COVID-19 brings our investment to over $40 million, largely focused on the health and welfare of frontline employees and their families. While the pandemic and associated restrictions impacted our traditional approach to providing in-person leadership training and personal development opportunities, we overcame these challenges with an online Learning Management System with increased emphasis on frontline education, significantly expanding the percentage of employees receiving training.

We also introduced a minimum wage target of $15/hour in 2020, expanded our Employee Scholarship Program that supports the educational goals of our employees' children, and increased our commitments to local food banks and organizations with a focus on families at risk and racial inequities. Building on these efforts, we look forward to rolling out our "Waste Connections Cares Day" to provide employees paid time off for community service, celebration of cultural heritage, or personal time. Employees can also donate this time to support coworkers in need through our Employee Relief Fund.

As a leading environmental services company, sustainability is not a new concept for us. In fact, many of the initiatives detailed in the following report highlight key areas that we have been pursuing since our inception in 1997, and are now a component of long-term incentive compensation.

As you consider our 2021 updates on sustainability, we hope that you will recognize the value of our track record for creating a culture of accountability, environmental stewardship, and safety, along with the inclusiveness of a servant leadership-driven organization.

We appreciate your interest in sustainability at Waste Connections and invite you to learn more at wasteconnections.com/sustainability.

Worthing F. Jackman
President and Chief Executive Officer

SUMMARY PERFORMANCE STATISTICS[1]

	2018	2019	2020
Health and Safety			
Employee Hours	40,460,877	44,637,413	46,279,544
Reportable Incident Rate[2]	16.3	17.4	15.4
Total Recordable Injury Rate (TRIR)	2.8	2.9	2.9
Experience Modifier Rate	0.72	0.54	0.62
People			
Total Employees as of Year End	16,356	18,204	18,933
Voluntary Turnover	17.8%	17.8%	14.6%
% of Employees that are Women[3]	16.0%	16.0%	16.0%
% of Employees that are Ethnic Minorities[3]	41.0%	40.0%	38.0%
% of Employees from Armed Services[3]	9.0%	8.0%	8.0%
Training/Leadership Development			
# of Sessions	173	168	231
Employees in Virtual or in-Person Training Sessions	4,444	5,215	12,474
% of Total Employees	27.2%	28.6%	65.9%
Financial Statistics ($000s USD)			
Revenue	$ 4,922,941	$ 5,388,679	$ 5,445,990
Net Cash Provided by Operating Activities	$ 1,411,235	$ 1,540,547	$ 1,408,521
Facilities			
Hauling Operations	279	300	311
Landfills	93	97	92
Transfer Stations	162	175	185
Intermodal Facilities	6	6	6
Recycling Facilities	64	66	68
E&P Liquid Waste Injection Wells	22	23	23
E&P Waste Treatment and Oil Recovery Facilities	19	19	19
Total	**645**	**686**	**704**

	2018	2019	2020
Fleet			
Total Routed Collection Vehicles	7,221	8,089	8,912
Total Routed CNG Collection Vehicles	1,070	1,119	1,166
Routed CNG Trucks as % of Routed Trucks	14.8%	13.8%	13.1%
Landfill Tons (tons per year)			
Municipal Solid Waste	27,158,637	28,922,292	27,831,800
Special Waste	11,539,499	11,943,036	10,773,600
C&D	6,821,864	7,098,672	6,284,600
Total	**45,520,000**	**47,964,000**	**44,890,000**
Recycled Commodities (tons per year)			
Old Corrugated Cardboard	436,971	452,668	524,787
Old Newspaper	60,460	39,939	39,368
Mixed/Other Paper	232,863	395,511	316,445
Glass	117,277	108,034	108,629
Metal	137,361	64,459	84,247
Aluminum	5,268	5,726	5,922
Plastics	27,219	95,134	90,119
Commingled/Other	519,625	538,046	611,289
Total	**1,537,044**	**1,699,517**	**1,780,806**
Landfill Gas Recovery Systems			
# of Landfill Gas Recovery Systems	52	53	53
# of Power Generation Systems	23	25	28
Annual Standard Cubic Feet Collected for Energy (billions)[4]	26.2	26.6	28.5
LFG Sales as % of Revenue	1.4%	1.0%	1.1%

[1] All data provided here has been subject to internal review and is believed to be correct at the time of reporting. No third party assessment of the data was obtained.
[2] 12-month rolling incident rate, defined as the number of all reportable incidents per 200,000 employee hours worked, preventable and non-preventable.
[3] WCN began tracking diversity statistics on 12/31/2018; % of calculation excludes individuals that did not disclose; 2020 % of minorities decreased due to impact from more employees self-disclosing.
[4] Prior values have been updated to reflect detailed performance data.

WASTE CONNECTIONS
Connect with the Future
512-282-3508
CAUTION

OUR OPERATING VALUES

Safety
We strive to assure complete safety of our employees, our customers and the public in all of our operations. Protection from accident or injury is paramount in all we do.

Integrity
We define integrity as "saying what you will do and then doing it." We keep our promises to our customers, our employees and our shareholders. Do the right thing, at the right time, for the right reason.

Customer Service
We provide our customers the best possible service in a courteous, effective manner, showing respect for those we are fortunate to serve.

To Be A Great Place To Work
We maintain a growth culture where our employees can maximize their potential personally and professionally. Our objective is to provide an environment where people enjoy what they do and take pride in their work. We wish to embody a work hard, play harder culture.

To Be The Premier Waste Services Company In The U.S. and Canada
We continue to provide superior returns, remain environmentally responsible, and grow in a disciplined way, deploying resources intelligently and benefiting communities we live in. We remain a "different breed".

PROGRESS TOWARD OUR TARGETS:

Sustainability initiatives with clear objectives are not new to Waste Connections. In fact, they have been an integral part of our business model as a leading environmental services company.

As part of our commitment to provide increased transparency on our sustainability efforts, we introduced fifteen-year aspirational sustainability targets in 2020, along with a commitment of $500 million towards their achievement. Our targets reflect our sustainability priorities, and they are integral to and consistent with our strategy and focus on value creation for our shareholders.

Our 2020 results show progress towards all of our sustainability priorities, including an 8% reduction in Scope 1 and Scope 2 greenhouse gas emissions. We also increased our offsets generated from our services provided, led by a 7% increase in landfill gas collected and converted to renewable energy and a 5% increase in recycling tons processed. These efforts further improved our net negative carbon footprint, reflecting the benefits of both reducing emissions and increasing our offsets to such emissions. Put simply, through our services offered in 2020, we were able to avoid 18.2 million metric tons of CO2e, a figure that exceeded our emissions generated from operations by over 3.2 times.

We also increased the throughput of on-site leachate processing by 13%, and improved our safety incident rate, voluntary turnover and employee engagement as measured by Servant Leadership scores. Our efforts positioned ourselves for continued progress towards achievement of our long-term objectives with a growing pipeline of projects under development, including high Btu Renewable Natural Gas (RNG) plants at our landfills, leachate treatment plants and state-of-the-art greenfield recycling facilities.

ENVIRONMENTAL

SOCIAL

GOVERNANCE

9

OUR SUSTAINABILITY TARGETS:

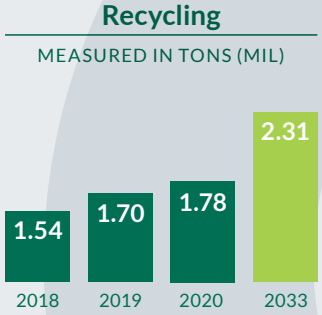
The following metrics represent our fifteen-year, aspirational targets, with 2018 as the baseline year. We have been pursuing many of these initiatives since our inception in 1997, and are now incorporating them into long-term incentive compensation. We are pleased to report progress across all metrics in 2020, versus the prior year.

RECYCLING

Read more about Recycling on page 16

50%

Increase resources recovered by at least 50%



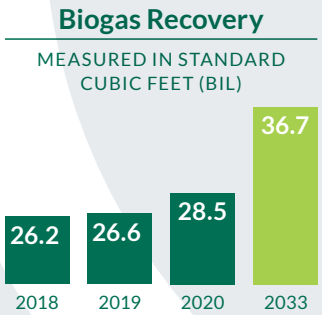
On Track ✓

BIOGAS RECOVERY

Read more about Biogas Recovery on page 18

40%

Increase biogas recovery by at least 40%



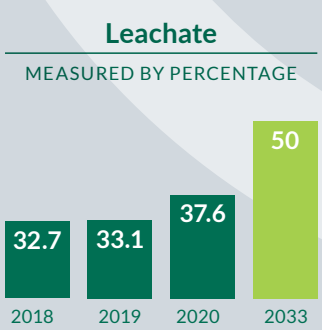
On Track ✓

LEACHATE

Read more about Leachate on page 20

50%

Process at least 50% of leachate on-site



On Track ✓

INCIDENT RATE

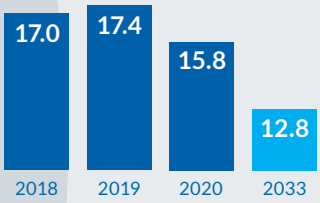
Read more about Incident Rate on page 40

25%

Reduction in Incident Rate

Incident Rate

INCIDENTS PER 200,000 WORK HOURS



On Track

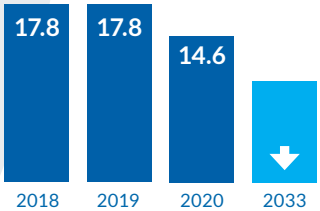
VOLUNTARY TURNOVER

Read more about Voluntary Turnover on page 36

Continuous Improvement in Voluntary Turnover

Voluntary Turnover

MEASURED BY PERCENTAGE



On Track

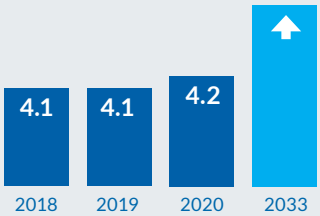
SERVANT LEADERSHIP

Read more about Servant Leadership on page 34

Continuous Improvement in Servant Leadership Scores

Servant Leadership

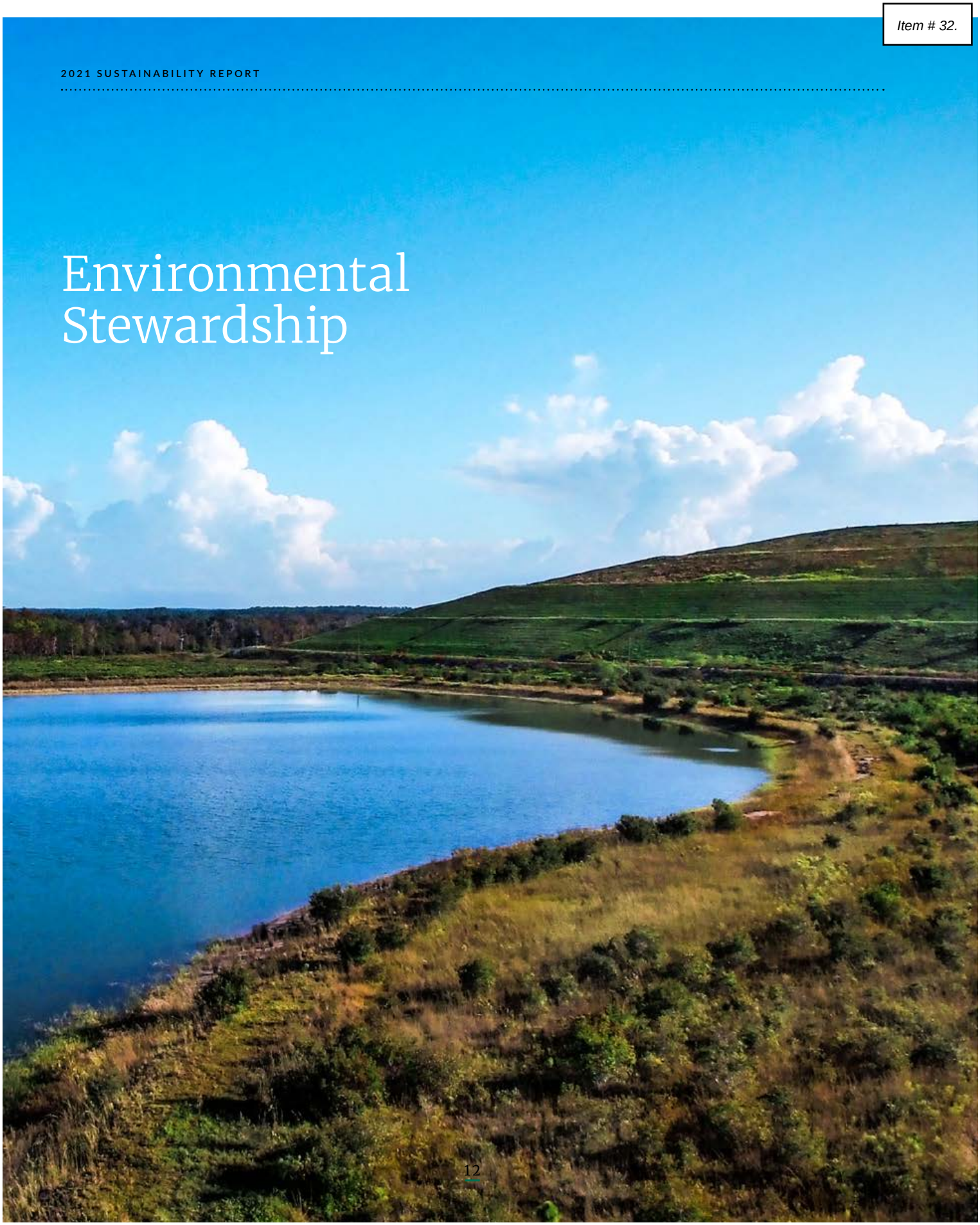
ON A SCALE FROM 1-5



On Track

Incident Rate represents same store data from 2018 levels.

Environmental Stewardship



As an environmental services company, Waste Connections is committed to environmental stewardship and we consider it integral to managing and responsibly growing our business. In addition to our Environmental Policy that effectively serves as a guidepost for our standards, we emphasize training, accountability, employee engagement and oversight in order to achieve our environmental objectives. We recognize the importance of minimizing our impact on the environment and the communities we are privileged to serve. As such, our objectives emphasize environmental compliance, resource efficiency, incorporation of biodiversity into site-closure plans along with communication and collaborations with our stakeholders.

Organizationally, our Vice President–Engineering and Sustainability has responsibility for oversight of our Environmental Management System and management of many of our sustainability efforts. Progress towards achievement of our fifteen-year aspirational targets is incorporated into management compensation and reviewed by our Board of Directors.

With a net negative carbon footprint by a factor of over three times, and an 8% reduction in Scope 1 and Scope 2 emissions in 2020, our environmental targets are consistent with our efforts since our founding. We anticipate further improvements and are committed to expanding our resource recovery capacity through a number of investments, including enhanced optical sorting technology, robotics and new screening equipment at recycling facilities, and construction or acquisition of additional resource recovery facilities. We are also expanding landfill gas recovery and Renewable Natural Gas (RNG) production through enhanced gas collection systems and facilitating the development of additional beneficial use facilities. In addition to these post-collection initiatives, we continue to evaluate the potential for fully electric, zero emission collection trucks, in the future.

OUR NET NEGATIVE CARBON FOOTPRINT

The activity of collecting our customers' solid waste as well as the biodegradation process for certain waste streams within a landfill generates carbon emissions. We recognize the impact that emissions have on climate change and therefore we employ multiple strategies to mitigate these emissions. The proof is in our results, with operational enhancements reducing Scope 1 and Scope 2 greenhouse gas emissions by 8% in 2020. Moreover, consistent with our Environmental Policy, we actively promote the efficient use of resources and in many instances beneficially reuse or divert materials from landfill disposal. For instance, in 2020, we were able to reclaim over four million gallons of petroleum from our E&P waste operations for beneficial reuse in other applications. In addition to processing recyclables at our MRFs, we also segregate additional materials at many landfills and in 2020, we beneficially reused over 170,000 tons of tires, concrete, asphalt and dimensional lumber, and diverted over 136,000 tons of additional material from landfills.

We also actively pursue projects to increase offsets to our emissions, including recycling and the beneficial use of landfill gas. In addition to carbon that is permanently sequestered in our landfills, our recycling services and beneficial reuse of landfill gas avoided 18.2 million metric tons of CO2e in 2020. These offsets exceeded our emissions generated from operations by over 3.2 times, putting us in a net negative carbon footprint position.

Our largest potential source of emissions results from our landfill operations in which our customers' putrescible waste breaks down over time and produces landfill gas, which we actively work to recover and beneficially reuse. To that end, we install gas collection and control systems when operationally feasible, often in advance of regulatory requirements. In order to mitigate fugitive emissions, we deploy drones at several of our landfills to detect potential breaches, utilize temporary cover systems to encapsulate the gas for beneficial reuse and modernize and expand gas collection systems. Where feasible, we beneficially convert the gas to electricity or renewable natural gas (RNG) that can be injected into a gas transmission pipeline.

Given the aforementioned initiatives, we experienced an 8% reduction in Scope 1 and Scope 2 operational greenhouse gas emissions and further solidified our net negative carbon footprint.

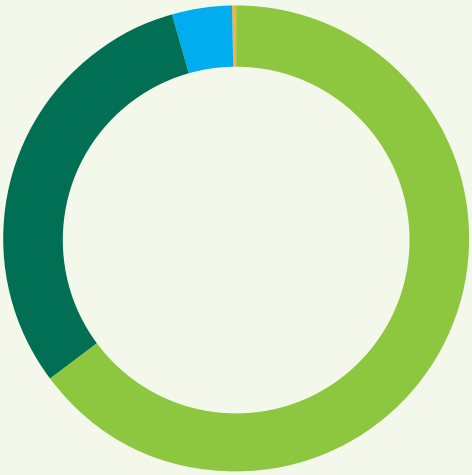
OUR CARBON OFFSETS FROM SERVICES PROVIDED:

Achieving our Targets

We generate carbon offsets through the services that we provide, including recycling and biogas recovery. Therefore, our fifteen-year target to increase carbon offsets, excluding sequestration, by 50% is linked to achievement of our recycling and biogas recovery targets. Given our growing pipeline of these projects under development, we are well positioned to achieve our recycling, biogas recovery and carbon offset targets.

Offsets from Services Provided

MEASURED IN METRIC TONS (MIL)



- Sequestration
- Recycling
- Landfill Gas
- Alt Fuel Vehicles

Total Offsets: 18.20

Emissions from Operations

MEASURED IN METRIC TONS (MIL)

- Scope 1
- Scope 2

Total Emissions: 5.66

> 3.2 x

RESOURCE RECOVERY: RECYCLING

At Waste Connections, resource recovery is a key element of sustainability and includes recycling through our material recovery facilities (MRFs). An integral part of our service offerings, we recycle or divert over 50% of our collected waste volumes in many markets, in some cases over 70%, and we continue to expand these efforts.

In fact, in spite of numerous challenges to the recycling industry including volatility in commodity prices and recent headwinds stemming from COVID-19-related operating challenges, Waste Connections has added recycling processing capacity through the acquisition of state-of-the-art facilities and the enhancement of operating capabilities at our existing MRFs through technology additions.

RECYCLING:

Achieving our Targets

The quality of recycled commodities is largely dependent on front-end source separation efforts, which can vary widely and impact MRF processing costs. Source separation education includes local training efforts, coupled with our WasteConnect app that helps customers confirm if a waste stream is recyclable.

At the plant level, we are investing in additional optical sorters and robotics to manage headcounts at MRFs, increase productivity and improve the quality and value of recycled commodities through reduced contamination rates. Beyond these enhancements at our existing facilities, we are positioned to achieve our targeted expansion of resource recovery by over 50% through increased recycling capacity. We have opportunistically acquired distressed recycling operations. We also plan to construct select greenfield recycling facilities within our footprint to complement or enhance our competitive positioning. Moreover, we continue to acquire recycling processing capabilities in conjunction with acquisitions of integrated solid waste operations.

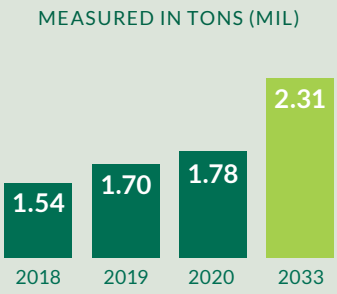
KEY 2020 ACCOMPLISHMENTS

In 2020, we expanded our use of robotics including the deployment of 25 robots to seven Material Recovery Facilities. We utilize robotics in various sorting capacities, which increases productivity, and the value of the end commodity through reduced contamination. In response to these additions, as well as select acquisitions, our recycling tons processed in 2020 increased by 5% versus the prior year. Going forward, we are actively pursuing the development of state-of-the-art greenfield recycling projects within our existing markets to more fully integrate our operations. These initiatives position us to achieve our long-term recycling target.

RECYCLING

50%

Increase resources recovered by at least 50%



On Track

RESOURCE RECOVERY: LANDFILL GAS

Resource recovery also extends to our landfills, where we deploy gas recovery systems and provide renewable energy to many of the communities we serve. We have installed gas collection systems for the capture of landfill gas generated at over 50 of our solid waste landfills with most of our remaining sites accepting substances such as construction and demolition debris or contaminated soils that do not generate sufficient methane gas for recovery.

In many instances, our gas recovery systems exceed regulatory requirements, creating the opportunity to convert additional landfill gas to a renewable energy source and mitigate the environmental impact. From 28 of these gas recovery systems, including one of the largest such recovery plants in North America, we provide the landfill gas to generate electricity for local households, fuel local industrial facilities, and/or to create RNG that can power alternative fuel vehicles. These projects create salable environmental attributes such as carbon emission credits, Renewable Energy Credits (RECs) or Renewable Identification Numbers (RINs).

LANDFILL GAS RECOVERY:

Achieving our Targets

The environmental benefits of utilizing landfill gas to generate electricity or produce pipeline-grade RNG is compelling, with the economic benefit dependent on several factors, including landfill size, age, gas generation rates, and infrastructure costs, as well as the value of the energy produced. At our 28 existing landfill gas recovery systems, we annually process approximately 28.5 billion Standard Cubic Feet (SCF) of gas for conversion to energy, or the equivalent needed to power roughly 289,000 homes.

KEY 2020 ACCOMPLISHMENTS

In 2020, we increased biogas recovery and conversion to energy by 1.9 billion standard cubic feet or approximately 7%. We are actively pursuing a number of additional opportunities for high Btu RNG systems at existing landfills and anticipate completion of another three to five facilities over the next three to five years. Given this outlook, we believe we have solid visibility on achieving our fifteen-year aspirational target to expand biogas recovery by at least 40% from 2018 levels.

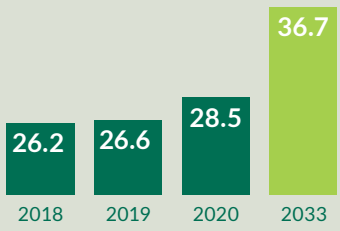
BIOGAS RECOVERY

40%

Increase biogas recovery by at least 40%

Biogas Recovery

MEASURED IN STANDARD CUBIC FEET (BIL)



On Track

LEACHATE MANAGEMENT

When it rains or snows, water infiltrates the buried materials within uncovered sections of landfills and mixes with the liquids and soluble substances contained in municipal solid waste, resulting in leachate. Leachate is contained by an impervious liner system constructed at the bottom of the landfill and is collected through a network of perforated drains. Subsequently, leachate is collected and either sent to a third-party disposal facility, such as a municipal or industrial wastewater treatment plant, or treated on-site through wastewater treatment facilities or evaporation.

LEACHATE MANAGEMENT:

Achieving our Targets

Through our current operations, we generate over 600 million gallons of leachate per year, over two-thirds of which has historically been disposed of off-site. Our fifteen-year aspirational target is to mitigate the environmental impact of transporting and disposing of leachate by enhancing our ability to dispose of leachate using our own facilities to over 50% of leachate generated. Reducing reliance on third parties allows us to more effectively manage the costs and mitigate the impacts associated with the transportation and off-site treatment and disposal of leachate.

KEY 2020 ACCOMPLISHMENTS

We expanded on-site leachate treatment by 13% in 2020, bringing our percentage processed on-site to 38%. We also recently began construction on additional leachate treatment facilities that we expect to come on line in 2022 and will further contribute towards achievement of our 50% target.

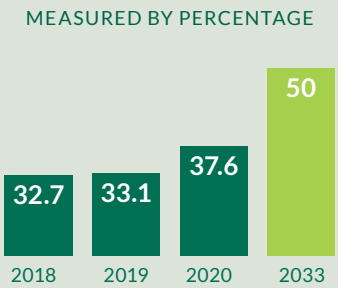
In order to further increase our leachate self-sufficiency, we will expand utilization of evaporator technology at some landfills and pursue other landfill practices such as reducing working face size or installation of temporary cover to minimize infiltration of rain or snow. We also will install on-site wastewater plants where applicable.

Always looking for a more cost effective and environmentally conscious way to treat and/or dispose of leachate and other waste, we are independently funding research into new leachate treatment methods with an annual commitment of $1 million over a five-year period.

LEACHATE

50%

Process at least 50% of leachate on-site



On Track ✓

FLEET EMISSIONS AND EFFICIENCY

As a route-based business, a portion of our carbon footprint is linked to our fleet, and therefore we look to selectively utilize alternative fuel vehicles as part of our efforts to reduce fleet emissions. In addition to utilizing Compressed Natural Gas (CNG) trucks, we will soon begin beta testing fully electric collection trucks.

In addition, we focus our efforts on reducing consumption of fuel and petroleum-based products through replacement of older trucks with newer, more efficient trucks, utilizing transfer station networks to consolidate waste onto fewer trucks, installing controls to minimize idling time, and switching to synthetic motor oils with longer replacement intervals, as well as reducing emissions by installing more advanced engine filters. In addition, we utilize technology, including on-board tablets and route optimization software, to minimize driving time, and engine diagnostics software to anticipate issues to avoid downtime.

Innovation

With the expected payload and route capacity of electric collection trucks comparable to diesel trucks, we look forward to beta testing fully electric vehicles, particularly given our encouraging experience from utilization of a hybrid unit in 2021. Although at a significant initial cost premium, the fully electric trucks operate quietly, generate zero emissions and are expected to provide considerable savings in fuel and maintenance expenses relative to comparable diesel trucks. We look forward to expanding the use of alternative fuel vehicles in Waste Connections' fleet over time.

ZERO WASTE

We believe our sustainability initiatives align with and support the efforts of our customers and the communities we serve. We regularly work with customers to increase resource recovery and facilitate their pursuit of zero waste goals. Whether providing services like composting of yard waste and food waste or supporting the introduction of new technologies, such as anaerobic digesters, we partner with communities and industrial customers to advance their objectives to reduce their reliance on landfills, decrease waste disposal costs and reduce emissions. Our easy-to-use reporting and analytics tool, Recycle 360°, enables our customers to develop waste management plans and track ongoing performance against waste reduction and recycling targets.

MATERIAL RECOVERY AND REUSE: EXPLORATION AND PRODUCTION (E&P) WASTE

With over thirty exploration and production waste treatment and disposal facilities across the United States, Waste Connections is one of the largest providers of non-hazardous E&P waste disposal. Through our E&P subsidiary R360 Environmental Solutions, we help customers responsibly treat, recycle or dispose of drill cuttings, drilling fluids, produced water and other non-hazardous E&P waste, representing an attractive and safe alternative to disposal at the drilling site. Our processes and technology can recover and transform many of our customers' waste streams into reclaimed oil, recycled produced water and reusable drilling fluids. In fact, since 2018, our E&P waste operations have collectively reclaimed nearly 18 million gallons of base oil, and tons sequestered in landfills and injected into deep formations give R360 a net negative carbon footprint. Pictured below is a night view of our state-of-the-art thermal processing facility near Stanton, Texas, that diverts hydrocarbons from landfills and offers a circular lifecycle to many of our E&P customers.

BIODIVERSITY AND SITE-CLOSURE

We approach our relationships with the communities we serve as long-term partnerships with an eye towards the future and respect for the environment. From the permitting process to operating protocols and eventual site closure, we consider the environmental impact that our businesses have on local habitats and the surrounding communities. At many of our larger landfills, we establish buffer property that utilizes local plants and vegetation to encourage and promote local wildlife and aesthetically blend with other local vegetation. As a part of the permitting process, we engage with local communities to establish a closure plan. As we anticipate that facilities will ultimately transition into closure, we ensure that closure plans are effective at restoring the land to a condition that is consistent with the biodiversity of the surrounding environment.

Pictured below is our Lachenaie landfill in Terrebonne, Quebec. Since 2019, Lachenaie has supported local pollinating insects by planting a variety of flowers on available land. Each year, the favorable living environment hosts approximately 320,000 honeybees – an example of our commitment to the local ecology and balance between human activity and nature.

ENVIRONMENTAL MANAGEMENT SYSTEM

As detailed in our Environmental Policy, we maintain a robust Environmental Management System (EMS) as part of our operating practices and risk mitigation strategy. Our EMS is an all-encompassing approach to environmental protection and regulatory compliance with oversight by our Vice President–Engineering and Sustainability, along with our Executive Vice President–Engineering and Disposal, and Associate General Counsel–Director of Compliance. It is managed by our Corporate Environmental Manager along with more than 70 trained professionals in the field. Our EMS is designed to prioritize environmental protection and promote the rapid flow of information from the field to those overseeing the EMS.

In order to ensure and track regulatory compliance, we utilize a proprietary compliance-tracking tool called the Cube to provide notifications, tracking and reporting of regulatory and permit-related tasks. The Cube notifies facility managers of upcoming tasks, documents their completion and uploads to each respective site's operating record. Monthly progress reports are provided to corporate environmental managers, resulting in follow up at multiple levels of management.

Annually, one or more of our environmental professionals audits each disposal site, reviewing operating records, infrastructure and the physical conditions, with potential risks of non-compliance tracked in the Cube for remediation and documentation. Our EMS also regulates the day-to-day handling and documentation of waste streams generated from operations, with all wastes disposed or recycled by third party customers inventoried and tracked through our audit function to demonstrate proper handling.

All sites incorporate emergency response planning, which, depending on geography, may incorporate contingencies for responding to various natural disasters or addressing other regional or local needs. We provide emergency action plan training in order to enhance response plans.

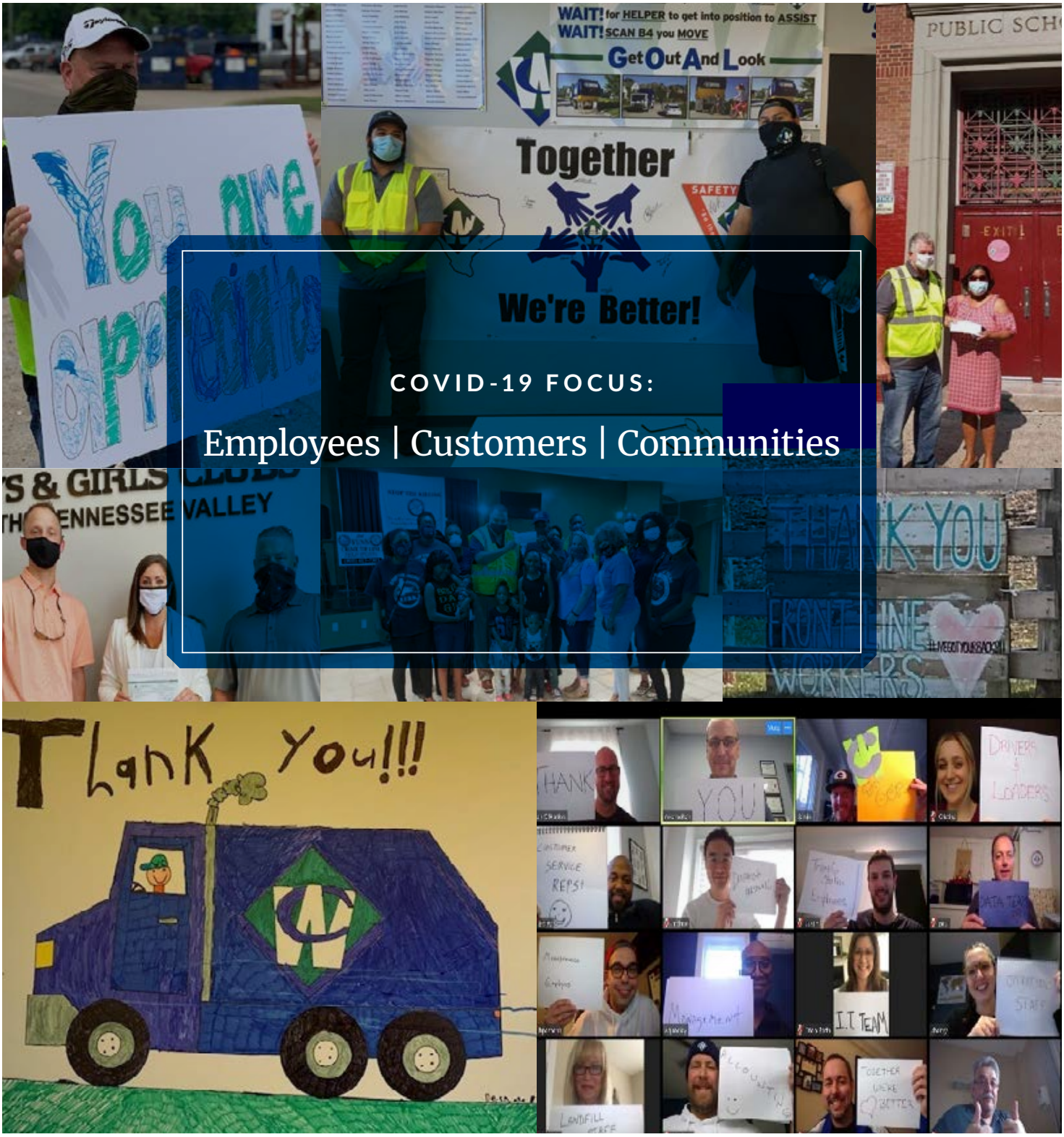
Employee Engagement

Waste Connections has a track record of superior results since its founding in 1997. We attribute that success to a differentiated strategy and a purposeful culture. Our market selection strategy, along with disciplined capital allocation, has produced superior financial results and shareholder returns. However, we believe that while strategy may have positioned us for success, it is our culture of accountability and commitment to excellence that has driven the value creation.

We maintain that our greatest differentiator is not our physical or financial assets; instead, it is our people and our purposeful culture. Our foundation is built on caring for our 19,000 employees, prioritizing safety as our #1 Value and integrating the principles of Servant Leadership – a philosophy we have embraced and expanded upon for over fifteen years – into our day-to-day operations.

CULTURE MATTERS

AT WASTE CONNECTIONS, WE BELIEVE OUR CULTURE DRIVES DIFFERENTIATED RESULTS, AND THEREFORE INVESTING IN OUR PEOPLE, OUR GREATEST ASSET, IS ALWAYS OUR PRIORITY.



COVID-19 FOCUS:

Employees | Customers | Communities

RECOGNIZING THE IMPORTANCE OF PUTTING EMPLOYEES FIRST, OUR SAFETY-FOCUSED, SERVANT LEADERSHIP-BASED CULTURE GUIDED OUR DECISION-MAKING AND FACILITATED OUR DIFFERENTIATED EXECUTION DURING THE COVID-19 PANDEMIC IN 2020, AND CONTINUES TO DO SO.

At Waste Connections, we believe that our safety-focused, Servant Leadership-driven culture leads to differentiated results, and therefore investing in our people, our greatest asset, is always our highest priority. As an essential services provider, we recognized from the onset of the COVID-19 pandemic that our communities would count on us and we on each other to honor our commitments; therefore, protecting the health, safety and welfare of our 19,000 employees has guided every decision we have made.

To support and protect our employees, we established protocols and implemented operational changes focused on the health and safety of our frontline employees and achieved seamless transitions to remote work environments for customer service representatives and other support personnel. In addition, we looked to provide a safety net for our employees on issues of income and family health. To that end, we provided full wages for employees feeling ill, under quarantine, or caring for family members, and two-thirds wages for up to 12 weeks for those with childcare issues. Through these efforts, we enabled our employees to make the right decisions about the health of their families and the well-being of their colleagues, which resulted in continuity of service to the communities we serve.

Recognizing the potential for financial hardship and the challenges unique to this period, we incurred over $40 million in incremental COVID-19-related costs, primarily supplemental wages which have been provided to all hourly employees, whether union or non-union, remote or on site, as well as temporary workers. We also expanded our Employee Relief Fund for those experiencing financial hardship, launched the Waste Connections Scholarship Program to assist our employees' children in pursuing their educational goals, fully covered COVID-19 related testing and medical costs, improved medical benefits and extended access to medical benefits.

In addition to our near-term COVID-19-related financial commitments, we raised our minimum hourly wage target to $15/hour in 2020, which

exceeds state and local wage requirements and will positively impact the earnings of over 800 employees. Looking beyond our people, we also recognized the needs of the communities where we live and work, increasing the level of charitable contributions to assist food banks, families at risk, and organizations with a focus on addressing racial inequities at a local or national level, providing meals for healthcare workers and higher risk populations, and donating critical personal protective equipment.

We recognized that reducing employee concerns regarding income, healthcare and family obligations during the pandemic would be critical to providing continuity of service and a bit of normalcy for customers. As we migrate into a new normal with reopening economies amid a lingering risk of infection, we understand the playbook to maintain safety in our operations and remain diligent with safety-related protocols. Unlike many organizations that have eliminated financial assurances, we continue to offer a safety net to our employees. We also recognize the importance of vaccination in reducing transmission of COVID-19 and strongly encourage employees and members of their families get vaccinated. Our strong operating performance during this chaotic and unprecedented period reflects the benefit of this focus and is a testament to the dedication and tireless efforts of every Waste Connections employee, whether in the field or working remotely.

SUPPORTING OUR FRONTLINE

$40M

Discretionary COVID-19 related expenses, primarily for supplemental employee wages.

$15/hr

Increased our minimum hourly wage target in 2020.

OUR
HEROES
WEAR
SAFETY
VESTS

Sip Saam Thai
BAT CITY GELATO
WASTE CONNECTIONS
Connect with the Future
512-282-3508

THE SERVANT LEADERSHIP JOURNEY

Servant Leadership has defined our Company since 2006. The Servant Leadership concept inverts the traditional management hierarchy, positioning leaders to serve their employees both professionally and personally. The philosophy empowers employees by prioritizing their needs, sharing responsibility and driving personal development.

Our leadership development efforts include multi-day Servant Leadership training sessions, district management training, dozens of varying leadership webinar topics, and other safety, sales, maintenance, operations and financial training courses engaging every employee level throughout the Company.

As an organization, we look to continually raise the level of accountability through our annual Servant Leadership survey, which provides employees the opportunity to grade their managers on an anonymous basis. The score, along with several other metrics such as talent development, are incorporated into the leader's compensation plan. We raise our level of accountability by putting Servant Leadership into action, not just words. Accordingly, we are targeting continuous improvement in Servant Leadership scores as an element of our long-term, aspirational goals.

Recognizing that we have a responsibility to those we have the privilege to lead, we look to position our employees for success, which begins with our most important value: safety. Holding every employee accountable for safety and scoring our leaders on Servant Leadership has driven accountability and produced results, evidenced by industry-leading financial metrics as well as safety and employee turnover levels that are significantly better than the industry average.

RECOGNIZING THE IMPORTANCE OF PUTTING OUR EMPLOYEES FIRST, OUR SAFETY-FOCUSED, SERVANT LEADERSHIP-BASED CULTURE GUIDED OUR DECISION-MAKING IN 2020.

ENGAGEMENT → RELATIONSHIPS = RESULTS

We identified Engagement as the foundation of our 2020 Vision, as we looked to position Waste Connections for the future with continued focus on the core values that have been integral to our success. That vision of engagement included expanding our offerings for training and development of our leaders and frontline employees, and innovating new technology platforms to increase connectivity with our employees, customers and communities in which we operate.

Our 2020 focus on engagement was timely, as the COVID-19 pandemic necessitated the use of remote alternatives to in-person training and development and highlighted the importance of connectivity both inside and outside of the Company. We believe that our investment in technology to enhance connectivity and its effectiveness during the pandemic will result in a stronger, more engaged team as we emerge from this period, and over time, lower voluntary turnover.

Our team has responded and recognized Waste Connections externally with a series of employee-nominated awards, including Glassdoor's Employee Choice Awards – Top CEOs as well as Comparably's Best Leadership Team, Best CEO for Women, Best HR Team, Best Sales Team and Happiest Employees.

glassdoor
TOP CEOs 2021
EMPLOYEES' CHOICE

VOLUNTARY TURNOVER AND ENGAGEMENT :

Achieving our Targets

At Waste Connections, we recognize that employee turnover and engagement metrics can be driven by intentional or unintentional corporate decisions over a protracted period. As such, we purposefully emphasize culture, employee training and development, and accountability in order to drive continuous improvement in both retention and Servant Leadership scores – our reflection of engagement.

Below are several of the engagement-driven efforts launched in 2020:

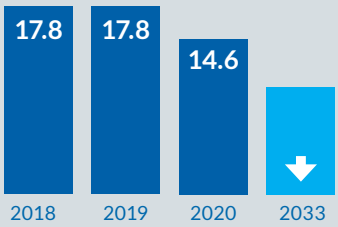
:: Launch of *Workplace*, our internal social networking application designed to facilitate communication, connection, recognition, celebrate successes and build relationships across our over 650 facilities;
:: Implementation of our enhanced Learning Management System to expand content and increase access and visibility on training and development opportunities;
:: Expansion of employee resource groups, including the Waste Connections Women's Network and the Veterans S.E.R.V.E. Network;
:: Expansion of training and onboarding tools for new employee transition and development; and,
:: Launch of a wellness website in the U.S. and wellness-related initiatives within Canada

KEY 2020 ACCOMPLISHMENTS

Our engagement focus, coupled with our COVID-19-related response to employee health and financial wellness, resulted in an 18% improvement to voluntary turnover in 2020. More than 80% of our employees responded to our annual Servant Leadership survey – our proxy for engagement – with manager scores further improving in 2020.

VOLUNTARY TURNOVER

Continuous Improvement in Voluntary Turnover



On Track

DIVERSITY AND INCLUSION

At Waste Connections, we are committed to building and developing diverse teams that function in an environment of mutual respect, where employees feel empowered to contribute. Operating across hundreds of markets in the United States and Canada, we recognize the benefits of diversity and the importance of ensuring that employees feel respected and included, encouraged to bring their unique perspectives, ideas and best skills to work each day. In keeping with our efforts to support and encourage diversity and inclusion, we have undertaken several initiatives, including the 2019 introduction of a formal Diversity Policy for our Board of Directors and Senior Management with aspirational targets for female Board representation and additional disclosure on workforce composition.

We also incorporated diversity and inclusion topics into Servant Leadership training and manager assessments in order to ensure that all employees are valued, feel empowered to contribute and are positioned for advancement opportunities. Following our leadership summit that focused on understanding and mitigating unintended biases, we enhanced recruiting practices to ensure the broadest candidate pools, offered monthly diversity and inclusion training modules, established financial commitments to organizations that focus on racial inequities and that support women and children at risk, and supported the development of resource groups including our Women's Network and Veterans' S.E.R.V.E. Network.

Waste Connections is a signatory to the *CEO Action for Diversity & Inclusion*, the largest CEO-driven business commitment to advance diversity and inclusion within the workplace.

DIVERSITY STATISTICS

Workforce Composition (U.S. and Canada)	Unit	Gender		Ethnicity	
		Female	Male	Caucasian	Ethnic Minority
Board of Directors*	Percentage (%)	25%	75%	88%	13%
Top Management Positions**	Percentage (%)	18%	82%	91%	9%
Total Workforce	Percentage (%)	16%	84%	62%	38%

Workforce Ethnic Composition (U.S. Only)*	Percentage
Caucasian	60%
Hispanic	22%
Black	14%
Multiracial	2%
American Indian or Alaska Native	1%
Asian	1%
Native Hawaiian or Other Pacific Islander	1%

Age Breakdown (U.S. and Canada)	Percentage
29 and Under	15%
30 to 49	51%
50 and Over	34%

Employees by Payment Type (U.S. and Canada)	Percentage
Hourly	85%
Salaried	15%

*Board of Directors Ethnicity and Workforce Ethnic Composition does not equal 100% due to rounding.
** Top management positions reflect employees within two levels of the CEO.

TAKING SAFETY TO THE NEXT LEVEL

We believe that safety is the responsibility of each and every employee; it is ingrained in our commitment-based, safety-driven culture. Moreover, as servant leaders are responsible for each employee's success at work and beyond, safety is an integral component of this commitment. We have relied on those relationships along with tools to develop employee risk-profile rankings and to facilitate effective communication and behavior-based coaching. In 2020, our behavioral-based approach to safety resulted in over 60% of our operating locations either posting zero safety-related incidents or reducing incident frequency versus the prior year.

SAFETY:

Key Initiatives

While we attribute our successful safety record to our culture and behavioral-based approach, we acknowledge that technology can be an important tool in identifying risky behaviors and providing coaching opportunities to address them.

In 2020, we launched a $10 million fleet-wide upgrade of our onboard camera systems, which are the foundation for establishing our risk-based scoring approach to encouraging safe driving practices. In contrast to existing systems, which largely track inertial movements in vehicles, the next generation systems utilize artificial intelligence and "Machine Vision" to identify additional risks both inside and outside of the cab. Such risk factors inside the cab include unbelted drivers, as well as distracted driving from handheld devices, food and beverages and smoking. Outside of the cab, the units can detect lane departures, rolling stops, unsafe following distances and other critical distances.

KEY 2020 ACCOMPLISHMENTS

The fleet-wide upgrade to next generation camera telematics is well underway with expected completion in early 2022. This technology, combined with lower traffic levels stemming from pandemic-driven restrictions in 2020, led to a 12% reduction in the number of incidents. Further, over 60% of our operating locations either posted zero incidents in 2020 or experienced year-over-year improvement.

Another addition to our safety program was the introduction to our fleet of Freightliner EconicSD trucks with an overhauled cab design that incorporates many of the safety features already included in passenger vehicles, as well as an integrated collision mitigation system, enhanced visibility, and several ergonomic improvements.

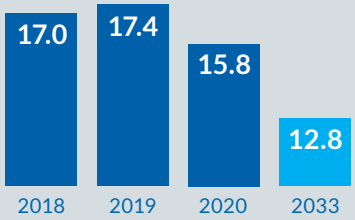
INCIDENT RATE

25%

Reduction in Incident Rate

Incident Rate

INCIDENTS PER 200,000 WORK HOURS



On Track

EMPLOYEE TRAINING AND DEVELOPMENT

At Waste Connections, we continue to expand our training programs to educate our employees beyond pertinent topics such as safety and environmental compliance that foster increased job performance. We also seek to increase employee knowledge and awareness toward increasingly important subjects such as Diversity and Inclusion and Cybersecurity. In 2020, we deployed a new Learning Management System ("LMS") in order to expand our reach to additional employees and provide mobile and tablet-based trainings. The efforts were timely given the need to limit in-class participation during the COVID-19 pandemic and we significantly increased both course count and employees that participated in training courses. Below are a few notable new training programs:

Diversity and Inclusion Mini Series
We provided monthly Diversity and Inclusion learning modules through our LMS to all employees. Our leaders utilized the mini courses and underlying discussion guides to have a deeper conversation on the topic with their teams. Topics have included unconscious bias, how to practice inclusiveness, breaking down stereotypes, creating psychological safety for employees and teams, allyship, and fostering belonging.

Training the Trainer
We developed a Driver Trainer Certification Course that focuses on how we can best serve our trainees beginning their Waste Connections driving career. The driver trainers learn next level skills to enhance current training strategies. Routing, documentation, distractions, normalization of deviance, Target 4 (safety) and conversation styles highlight the learning content delivered virtually or in-person.

Business Acumen
Business Acumen financial training links expertise in certain roles to Waste Connections strategic priorities. The six-hour online workshop or three day in person session aligns operations to corporate strategy and focuses on the development of the five business drivers – Cash, Profit, Assets, Growth and People.

Cybersecurity training
We offer a five-part training course designed to improve employee cybersecurity awareness and educate users on today's threats. We also provide digital courses that focus on phishing awareness and common cybersecurity attacks.

THE LAUNCH OF OUR NEW LMS WITH INCREASED EMPHASIS ON FRONTLINE EDUCATION SIGNIFICANTLY EXPANDED THE PERCENTAGE OF EMPLOYEES RECEIVING TRAINING.

Community Impact

GIVING BACK AND MAKING AN IMPACT

At Waste Connections, we also attribute our success to the support we receive from communities we serve, where our employees also live and work. We provide opportunities for our employees to get involved in their communities and consider it a privilege for Waste Connections to also give back through charitable donations or sponsoring community events.

Giving Locally – Waste Connections and our employees support more than a thousand organizations through direct contributions, volunteering and/or fundraising at a local level. Each year, we donate millions of dollars to various charities, including an increasing number of organizations identified by our frontline employees that focus on racial inequities at a local or national level, and that support women and children at risk in disadvantaged communities.

Our Company-wide Culture of Giving – In addition to our local efforts, we are proud of our Company-wide traditions. In 2019, we achieved a 20-year Waste Connections Christmas Promise goal one year ahead of schedule, as employees across the company assembled and donated over 10,000 bicycles to deserving children, bringing our total donated since inception of Christmas Promise to approximately 65,000 bicycles. In addition, despite canceling our 2020 Annual Waste Connections Golf Classic for Kids due to COVID-19-related safety concerns, we were able to hold virtual auctions and in aggregate raise over $1 million for charities that support at-risk youth and their families.

Sustainability and Giving – Waste Connections aligns its major financial contributions with its goal to further advance environmental sustainability. For example, our first major grant helped establish the Global Waste Research Institute (GWRI), developed in conjunction with California Polytechnic State University, San Luis Obispo.

The GWRI's mission is to advance state-of-the-art research and development of sustainable technologies and practices to more effectively manage existing and emerging wastes and byproducts. We also regularly contribute to the Environmental Research Education Foundation and fund over $1 million per year in research related to the environmental industry.

SELECT ORGANIZATIONS WE SUPPORT:

Alzheimer's Resource of Alaska

American Cancer Society

American Heart Association

American Red Cross

Angel Reach

Beyond Batten Disease

Big Brothers Big Sisters

Boys and Girls Clubs

Bridge the Gap

Bridge to Home

Canadian Club of Toronto

CASA Child Advocates

Cayuga Seneca Community Center

Centre for Young Black Professionals

Charleston Area Justice Ministry

Children's Home Society

Chippewas of the Thames First Nation

Coalition of Communities of Color

Columbia River Mental Health Foundation

Eloy Food Bank

Emergency Food Network

Empire Club of Canada

Empower Tehama

Equal Justice Initiative

Fondation – CSSS Du Sud De Lanaudiere

Feed the Front Line

Genesis House

Habitat for Humanity

Henry's Home

Homeless Youth Connections

Homes4Families

Hope Ministries

Inner City Outreach

Inspiration Ranch

Interfaith of The Woodlands

Juvenile Diabetes Research Foundation

Kids Meals

Kids 'n Kinship

Leukemia & Lymphoma Society

Lighthouse for Grieving Children

Loaves and Fishes Family Kitchen

Lotus House

Love Fosters Hope

Low County Food Bank

Make-a-Wish Foundation

March of Dimes

Meals on Wheels

Mission of Hope

Montgomery County Food Bank

Multiple Sclerosis Foundation

National Women's Hall Of Fame

Northwest Association for Blind Athletes

Oklahoma Children's Hospital

Pink Lemonade Project

Police Association of Ontario

Redeemed Ministries

Roger Clemens Foundation

Ronald McDonald House Charities

Seneca Falls Fire Department

Sommet socio-économique pour le développement des jeunes des communautés noires

Special Angels

Special Olympics

St. Jude Children's Research Hospital

Step by Step

Tent Mission STL

The 30-Days Foundation

The Black Coalition for AIDS Prevention

The Conservation Fund

The Salvation Army

The Wishing Well Foundation

Toby Keith Foundation

United Negro College Fund

United Way

Veterans Emergency Relief Fund

Volunteer Prince William

Westborough Police Foundation

Win Victim Services

Women's Institute for Leadership and Learning

Winter Center for Autism

Wreaths Across America

YES to Youth

Young Men's Educational Network (YMEN) Chicago

Youth Alliance

Youth First

WASTE CONNECTIONS CARES

GIVING BACK TO EMPLOYEES

In 2017, we created the Waste Connections Employee Relief Fund to help employees and their immediate families who have experienced significant financial hardship following a natural disaster or other catastrophic event. In 2020, we expanded its applicability to address unexpected hardships experienced during COVID-19. Through contributions from Waste Connections, our employees and vendors, we assist impacted employees by helping to pay for essential living expenses, such as food, clothing, utilities, temporary housing, property repairs, and other basic necessities.

In 2020, we also introduced the Waste Connections Scholarship Program, which awards renewable scholarships of $2,500 each per academic year for up to four years to assist our employees' children to pursue and achieve their vocational, technical and university education goals. Now in its second year, the scholarship program has more than doubled the number of award recipients.

COMMUNITY ENGAGEMENT

Now more than ever it is critical to increase engagement within our communities and connectivity with our customers. Through our WasteConnect app, customers can confirm their collection dates, search our Waste Wizard database to confirm if a waste stream is recyclable, pay their bills, and communicate with their local service provider. We have also simplified the customer onboarding process with streamlined online sign-up and service routed through our proprietary artificial intelligence-enhanced C2O software.

We partner with our communities and in many instances deploy recycling coordinators to schools, community events and residences to provide educational sessions about the benefits of recycling and proper waste management. In 2019, we launched the *Bob Davis Award for Leadership in Sustainability* to recognize employees who demonstrate exemplary leadership in advancing sustainability through implementing or serving on community projects, programs, outreach, education, initiatives or services that benefit their community, customers, coworkers or Waste Connections.

Governance and Ethics

KEY GOVERNANCE ADDITIONS FOR 2021

- Environmental Policy
- Human Rights
- Cybersecurity
- Incentive compensation now integrating ESG targets

Since our inception, we have been committed to well-defined principals of corporate governance. Our Corporate Governance Guidelines and Board Charter align the Board of Directors and its four distinct committees with management in order to promote the best interests of the Company. More recently, the Board of Directors adopted a Diversity Policy for the Board of Directors and senior management, which provides for annual progress reviews by the Board. Similarly, the Board provides oversight of our aspirational ESG targets introduced in 2020, with management compensation tied to progress against our ESG targets beginning in 2021.

Highlights of what we believe exemplify our adherence to sound principles of corporate governance include:

:: Directors are elected individually;
:: Majority voting policy for the election of our Directors;
:: Separate CEO and Chairman of the Board of Directors, or Board Chairman positions;
:: Having a strong Lead Independent Director serve on the Board of Directors;
:: Women account for 33% of independent Board members and 25% of total Board members;
:: Annual Board of Directors and committee evaluation processes;
:: Board of Directors' oversight of risk;
:: Robust risk management program related to compensation;
:: Share ownership requirement for Directors and corporate officers;
:: Diversity Policy including aspirational targets for Board of Directors composition;
:: Regular executive sessions of only independent directors; and
:: Director retirement policy.

Our Board of Directors has four standing committees: the Executive Committee, the Audit Committee, the Compensation Committee, and the Nominating and Corporate Governance Committee. Except for the Executive Committee, the committees are composed entirely of independent, non-employee directors.

The Board's Role in Risk Oversight

The Board of Directors and its committees have an active role in overseeing management of the Company's risks. The Board of Directors regularly reviews information from members of senior management regarding the Company's safety performance, employee retention, financial performance, financial outlook, balance sheet, credit profile and liquidity, as well as the risks associated with each. The Board of Directors also receives reports from members of senior and regional management on areas of material risk to the Company, including market-specific, operational, legal, information technology (including cybersecurity), regulatory and strategic risks. The Board of Directors, with recommendations from the Audit and Compensation Committees, approves and maintains a succession plan for the CEO and other senior management of the Company, including policies and principles for selecting and evaluating a new CEO in the event of an emergency or retirement of the CEO. The Audit Committee oversees management of financial, financial reporting and internal controls risk. The Compensation Committee assesses and monitors risks relating to the Company's corporate officer compensation policies and practices. The Nominating and Corporate Governance Committee is responsible for overseeing the management of risks associated with the independence of the Board of Directors and potential conflicts of interest.

The Board of Directors receives reports on information technology risks, including cybersecurity and data security risks. Day-to-day management of data security is the responsibility of our Chief Information Officer, who reports directly to the Chief Executive Officer. The Board periodically reviews cybersecurity and data security risks and mitigation strategies with the Chief Information Officer.

The Board of Directors and its committees also have an active role in the Company's efforts to advance sustainability and diversity and inclusion, including the development and approval of targets, monitoring achievement towards such objectives, and evaluating the effectiveness of policies and targets. In addition, the Board added ESG targets as a performance measure in long-term incentive compensation beginning in 2021.

Communications with the Board

Shareholders and other interested parties may communicate with the Board of Directors generally, with the non-employee directors as a group or with a specific director at any time by writing to the Board of Directors, the non-employee directors or a specific director, care of the Company's Secretary, at our principal administrative offices located at Waste Connections, Inc., 3 Waterway Square Place, Suite 110, The Woodlands, Texas 77380.

Shareholder Outreach

We believe that our relationship with and accountability to shareholders are critical to our success. Engaging with our shareholders helps us to understand how they view us, to set goals and expectations for our performance, and to identify emerging issues that may affect our strategies, sustainability initiatives, corporate governance, compensation practices or other aspects of our operations. Our shareholder and investor outreach includes investor road shows, analyst meetings, investor meetings and investor conferences, either virtually or in person. We also communicate with shareholders and other interested parties through various media, including our annual and quarterly reports, sustainability reports, proxy statements and other SEC and Canadian securities filings, press releases and our website. Our conference calls for quarterly earnings releases and major corporate developments are open to all. These calls are available in real time and are also archived as webcasts on our website. Our President and CEO, Chief Financial Officer and other senior management also regularly engage with investors to discuss our strategy, financial and business performance, and ESG efforts and to update investors on key developments.

Code of Conduct and Ethics

We have adopted a Code of Conduct and Ethics that applies to all of our directors, officers and employees. Our Code of Conduct and Ethics details Company principles to guide employee decision-making in many areas, including:

:: *Conflicts of Interest*
No officer, director or employee may be subject to influences, interests or relationships that conflict with the best interests of the Company.

:: *Full, Fair and Accurate Disclosure*
It is the Company's policy that the information in its public communications, including its SEC filings and filings with the Canadian Securities Administrators, be full, fair, accurate, timely and understandable.

:: *Compliance with Laws, Rules and Regulations*
It is the Company's policy to comply with all laws, rules and regulations applicable to the Company and its operations. The Company's

strict compliance policy also extends to all other applicable laws and regulations, including compliance with the U.S. Foreign Corrupt Practices Act (FCPA), the Canadian Corruption of Foreign Public Officials Act (CFPOA), and other applicable anti-corruption laws; antitrust laws; tax laws; environmental and safety regulations; equal opportunity; non-discrimination and fair employment; and foreign asset control regulations.

:: *Prohibited Accounting Practices*

The Company's policy is to make and keep books, records and accounts that accurately and fairly reflect the transactions of the Company.

:: *Whistleblowing – Reporting Illegal or Unethical Behavior*

All officers, directors and employees should promptly report to senior management all actual or potential illegal or unethical behavior of Company personnel that they observe. The Company encourages and expects full and open communication with senior management even when it appears that less candor may be desirable to protect the Company or members of management. It is the Company's policy and the responsibility of each officer, director and employee to comply with all whistleblower protection laws, rules and regulations.

:: *Compliance and Discipline*

Violations of this Code by officers, directors or employees will result in disciplinary action that may include termination, referral for criminal prosecution and reimbursement to the Company for any losses or damages resulting from the violation.

:: *Fair Dealing; Moral and Ethical Standards*

Each officer, director and employee must endeavor to deal fairly with the Company's customers, suppliers, competitors and employees and not to take unfair advantage of anyone through manipulation, concealment, abuse of privileged or misappropriated confidential information, misrepresentation of material facts or any other unfair dealing practice. More generally, each officer, director and employee must adhere to and comply with the highest moral and ethical standards of our society in conducting business on behalf of the Company.

:: *Human Rights*

It is the Company's policy and the responsibility of each officer, director and employee to comply with all laws, rules and regulations related to the protection and advancement of human rights, including, but not limited to, laws, rules and regulations governing the use of child labor, compulsory or forced labor, slavery and human trafficking, and freedom of association and collective bargaining.

:: *Insider Trading*

Buying or selling securities, directly or

indirectly through family members or other persons or entities, while possessing material nonpublic information or selectively disclosing such information to others who may trade based on it is prohibited by applicable securities laws.

:: *Contributions*

Officers, directors and employees may not (directly or indirectly) contribute Company funds to, or spend Company funds in support of, any kind of political party, political action committee or other committee in the United States or Canada or to any candidate for, or holder of, any office of any national, state or local government in the United States, or any national, provincial or local government in Canada. Exceptions may be permitted for state, provincial and local contributions in jurisdictions that permit corporate political contributions, but only upon approval by the Company's Chief Executive Officer and in consultation with the General Counsel. In countries other than the United States or Canada, the policy will be determined in accordance with local law and practice as well as laws applicable to the Company.

No political contribution by any officer, director or employee may be made, or even appear to be made, with the Company's funds, or be reimbursed from the Company's funds; nor should the selection of a candidate or a party be, or seem to be, coerced by the Company. Officers, directors and employees are prohibited from using their positions to induce, coerce or in any way influence any person, including subordinates, to support or contribute time or money to any political party, to the campaign of any candidate for office or to any charitable activity.

The Nominating and Corporate Governance Committee is responsible for, among other matters, the development and implementation of the Company's corporate governance principles, including the review of and compliance with our Corporate Governance Guidelines and Board Charter and our Code of Conduct and Ethics. The Nominating and Corporate Governance Committee is responsible for monitoring the implementation of the Company's diversity policy on a periodic basis, and at least annually, to assess its effectiveness, monitoring and reviewing the Company's progress in achieving its aspirational targets and reporting the results to the Board, and making recommendations to the Board regarding any revisions to this policy that may be necessary or appropriate.

The Board is responsible for reviewing strategy, policies and performance related to the Company's management of environmental, social and

governance (ESG) issues, including reviewing any reports on the Company's performance against ESG targets, any ESG programs, products and disclosures, and any corporate responsibility policies and programs, in coordination with other committees of the Board, as appropriate.

Copies of our Corporate Governance Guidelines and Board Charter and our Code of Conduct and Ethics are available on our website at http://wasteconnections.investorroom.com. A copy of the Corporate Governance Guidelines and Board Charter and our Code of Conduct and Ethics may also be obtained, free of charge, by writing to our Secretary or Investor Relations at our principal administrative offices located at Waste Connections, Inc., 3 Waterway Square Place, Suite 110, The Woodlands, Texas 77380.

Integration of ESG metrics into Management Compensation

In October 2020, the Company adopted long-term, aspirational sustainability targets and committed over $500 million for investments to meet or exceed such targets. These targets primarily focus on reducing emissions, increasing resource recovery of both recyclable commodities and clean energy fuels, reducing reliance on off-site disposal for landfill leachate, increasing employee engagement, and further improving our industry-leading safety performance. The Company views its ESG/sustainability initiatives to be consistent with its objective of long-term value creation. As such, the Compensation Committee introduced continuous improvement towards the Company's sustainability targets as an additional performance measure of long-term incentive compensation beginning in 2021.

Data Security and Privacy

We maintain, log and monitor all information and technology assets – data, systems, and applications – that are critical to the operations and success of Waste Connections. We have incorporated a defensive and offensive security strategy built on people, process, and technology with a focus on threat intelligence and security operations.

Waste Connections continues to maintain a robust security posture in response to today's ever-evolving threat landscape. The prime directive of this initiative is the safety and security of our customers' and employees' information. Our security model refers to an information security approach in which security mechanisms and controls are strategically layered throughout our infrastructure to secure our data's confidentiality, integrity, and availability. We have the same expectations for our information technology service providers and all third parties that support the business.

Managing Data Security Risk

We employ the widely recognized National Institute of Standards & Technology Framework for Improving Critical Infrastructure Cybersecurity (The NIST Cybersecurity Framework) to manage cybersecurity risk. This voluntary guidance was developed with private sector input in 2014 and provides a framework for organizations to manage cybersecurity risk. We regularly assess our technologies and monitor our systems and other technical security controls, maintain information security policies and procedures, including an incident response plan, ensure maintenance of backup and valuable systems, and have a team of security personnel managing our efforts and initiatives.

Policies have been put in place to protect our customers and employees from fraudulent activity by building processes that require continuous education, phishing simulations, real-time threat monitoring, and detection. We use vulnerability scanning tools to regularly assess potential data security risks across our businesses. We correlate the results and prioritize any actions based on threat modeling analysis and monitor any actions in-progress with the system owners based on assigned timelines for remediation. In addition, we actively monitor the web for any suspicious domain registrations, social media disinformation, and fraudulent campaigns being initiated against its customers and/or employees.

Upholding Data Privacy

We strive to protect personal data through reasonable technical and organizational security measures including technical security tools, restrictions on access to data, and physical security measures to help prevent unauthorized or unlawful access, disclosure, loss, destruction, or damage. We access and use personal data for legitimate business purposes and maintain appropriate access controls and use limitations.

Our employees are required to follow all applicable privacy, information security, and data protection laws, including the California Consumer Privacy Act. Our Data Privacy Policy sets forth the principles that govern our treatment of personal data, while our Policy on the Acceptable Use of Systems and Data governs the use and protection of information about our company and information that is stored on our computers and mobile devices. Our policies restrict individuals' access to personal data to those that need access to accomplish a business objective and allow access only for so long as it is necessary.

We endeavor to follow data privacy best practices and have established specific governance structures

to regularly review and improve upon our data privacy processes.

Environmental Policy

Waste Connections is committed to environmental protection and compliance. In order to realize and communicate these commitments to our employees and contractors, Waste Connections has developed an Environmental Policy which applies to all of our employees and contractors. Waste Connections' management, including our Vice President – Engineering and Sustainability, is responsible for communicating, implementing and reviewing this policy annually. A full copy of our Environmental Policy can be found on our website. Below are highlights of our policy:

:: *Environmental Compliance*
Comply with or exceed all local, state and federal environmental laws and regulations in order to manage and mitigate air, water and land-based pollution.

:: *Environmental Management System or "EMS"*
Utilize and continually improve our EMS (The Cube, the Environmental Compliance Audit Center, and/or other future systems) in order to track, audit and promote environmental compliance on a site-by-site basis.

:: *Biodiversity and Site – Rehabilitation*
As facilities are transitioned into closure, ensure that site construction, and closure plans are effective at restoring the land to a condition that is consistent with the biodiversity of the surrounding environment.

:: *Emergency Preparedness*
Establish emergency response action plans on a site-by-site basis including processes to guide site personnel and local community service providers during emergency events.

:: *Resource Efficiency*
Minimize internal waste generation and incorporate new technologies where applicable to mitigate our environmental impact.

:: *External Communication*
Promote the benefits of proper waste management including resource recovery to local stakeholders and customers.

:: Stakeholder Engagement
Partner with and engage the public as part of our environmental decision-making processes in order to promote the fair treatment and the opportunity for meaningful involvement of all people within the communities we serve.

:: *Environmental Performance Measurement*
Report our environmental progress through our annual Sustainability Report, and, as required with regulatory agencies.

:: *Employee Training*
Provide adequate training, oversight and resources to our employees to promote awareness and successful implementation of this Policy.

GLOBAL REPORTING INITIATIVE EMISSIONS DISCLOSURE

EMISSIONS DISCLOSURE

Waste Connections emissions disclosure was developed using the Global Reporting Initiative (GRI) G4 Sustainability Reporting Guidelines. Waste Connections GHG Inventories were prepared by a third-party, independent environmental services firm with the conclusions audited and verified by a separate third-party. The data was prepared in a manner consistent with The Climate Registry (TCR) General Reporting Protocol (GRP) Version 2.1 dated January 2016 and its associated updates and clarifications.

In 2018, Waste Connections began using the SWICS calculation methodology. This methodology is more reflective of modern landfill design and industry practices, and was utilized for comparison purposes relative to the solid waste peer group.

The impact of carbon sequestration in our landfills is significant and well documented in scientific literature. Due to anaerobic conditions that exist within landfills, lignins and hemicellulosic materials remain undecomposed. They represent approximately 50% of biogenic carbon in the waste stream. Waste Connections disposed of 36,020,954 and 34,116,400 tons of Municipal Solid Waste and Construction & Demolition debris in 2019 and 2020, respectively. In total, our landfills sequestered 12,340,905 and 11,790,884 MT CO2e in 2019 and 2020, respectively.

G4-EN15:
Direct (Scope 1) greenhouse gas (GHG) emissions

MT CO_2e		
2018	2019	2020
5,089,083	6,006,643	5,609,964

G4-EN16:
Energy indirect (Scope 2) GHG emissions

MT CO_2e		
2018	2019	2020
53,993	55,442	51,506

G4-EN17: Other indirect (Scope 3) GHG emissions

Emissions Source	MT CO_2e		
	2018	2019	2020
Purchased goods and services	821,606	861,763	744,323
Capital goods	233,539	292,218	233,961
Waste generated in operations	117,871	151,342	77,359
Upstream transportation and distribution	429,847	503,351	498,960
Business travel (air and vehicle)	53,166	51,142	49,977
Use of sold products	54,785	84,119	48,436
Total	**1,710,814**	**1,943,936**	**1,653,017**

G4-EN18: GHG emissions intensity

	Unit	2018	2019	2020
Gross Revenue	$ US Dollars Millions	$ 4,923	$ 5,389	$ 5,446
Scope 1 Emissions	MT CO_2e	5,089,083	6,006,643	5,609,964
MT CO_2e/$M Revenue		1,034	1,115	1,030
Scope 2 Emissions	MT CO_2e	53,993	55,442	51,506
MT CO_2e/$M Revenue		11	10	9
Scope 1 & 2 Emissions	MT CO_2e	5,143,076	6,062,085	5,661,470
MT CO_2e/$M Revenue		1,045	1,125	1,040

G4-EN19: Reduction of GHG emissions

Waste Connections has undertaken several initiatives to reduce GHG emissions. The Company collected landfill gas for use at landfill gas-to-energy facilities at 28 landfills in 2020. The beneficial reuse of landfill gas at these facilities resulted in annual avoided GHG emissions estimated at 690,492 and 746,092 MTCO2e in 2019 and 2020, respectively. The estimate of avoided emissions assumed that natural gas was the fuel replaced by the use of landfill gas. The avoided emissions were calculated using default methodologies from TCR included CO2, CH4 and N2O emissions.

Waste Connections diverts over 50% of collected waste volumes in certain markets, in some cases over 70%. The estimated avoided GHG emissions in 2019 and 2020 from recycling was 5,037,064 and 5,645,326 MT CO2e, respectively. These values were calculated using the USEPA Waste Reduction Model (WARM).

Over the past several years, Waste Connections has deployed vehicles using alternative fuels such as compressed natural gas (CNG) and biodiesel as a means of reducing its GHG footprint. Waste Connections currently deploys approximately 1,200 CNG vehicles. The estimated annual reduction in GHG emissions from CNG vehicles was 22,803 and 21,824 MT C02e in 2019 and 2020, respectively. The calculation uses an equivalent diesel vehicle as a baseline.

G4-EN22: Water discharge by quality and destination

In 2019, Waste Connections collected 703,342,262 gallons of leachate with 470,251,239 gallons being sent to third parties for treatment. In 2019, Waste Connections also collected 659,722,620 gallons of E&P produced water for on-site treatment. A total of 31,764,417 gallons of E&P produced water was sent to third parties for treatment in 2019.

In 2020, Waste Connections collected 696,531,341 gallons of leachate with 434,295,795 gallons being sent to third parties for treatment. In 2020, Waste Connections also collected 581,936,547 gallons of E&P produced water for on-site treatment. A total of 21,201,290 gallons of E&P produced water was sent to third parties for treatment in 2020.

Our E&P waste water treatment technologies allow us to process and dispose 100% of drilling-related waters without discharging to surface waters. The majority of waste fluids are injected into brine formations via deep wells.

SUSTAINABILITY ACCOUNTING STANDARDS BOARD DISCLOSURE

SASB APPENDIX

Greenhouse Gas Emissions

	Unit	2019	2020
Gross global Scope 1 emissions	MT $C0_2e$	6,006,643	5,609,964
Scope 1 coverage under emissions-limiting regulations	Percentage (%)	85%	78%
Scope 1 coverage under emissions-reporting regulations	Percentage (%)	85%	78%
Total landfill gas recovered	Million British Thermal Units (MMBtu)	21,547,648	22,939,938
Landfill gas flared	Percentage (%)	39%	40%
Landfill gas used for energy	Percentage (%)	61%	60%

Fleet Fuel Management

	Unit	2019	2020
Fleet fuel consumed	Gigajoules (GJ)	10,501,924	10,743,000
Natural gas as a % of fuel consumed	Percentage (%)	8.0%	7.8%
Alternative fuel vehicles as % of routed collection fleet	Percentage (%)	13.8%	13.1%

Air Quality

	Unit	2019	2020
NO_X (Excluding N_20)	Metric Tons (t)	265	285
SO_X	Metric Tons (t)	62	67
Volatile organic compounds (VOC)	Metric Tons (t)	N/A	7.7
Hazardous air pollutants (HAP)	Metric Tons (t)	N/A	10.9
Number of facilities in or near dense population centers	Number	7	7
Non-compliant air emissions issues	Number	2	2

Management of Leachate

	Unit	2019	2020
Total leachate collected	Gallons (000)	703,342	696,531
Total leachate treated by third parties	Gallons (000)	470,251	434,296
Corrective actions implemented for landfill releases	Number	0	0
Incidents of non-compliance associated with environmental impacts	Number	0	0

Labor Practices

	Unit	2019	2020
Active workforce covered under collective bargaining agreements	Number	3,159	3,172
Work stoppages	Number	0	1
Impacted employees as a percent of total workforce	Percentage	0.00%	0.76%
Total days idle	Days	0	6

Workforce Health & Safety

	Unit	2019	2020
Total recordable incident rate (TRIR)[1]	Rate	2.91	2.90
Incident rate (I-Rate)	Rate	17.4	15.4
Fatality rate	Rate	0.00	0.02

[1] BASIC score definitions are unclear and can be inconsistent; WCN prefers to use TRIR and Incident Rate as a better barometer of safety.

Recycling & Resource Recovery

	Unit	2019	2020
Waste incinerated	Metric Tons (t)	0	0
Hazardous waste incinerated as percent of waste incinerated	Percentage (%)	0%	0%
Energy recovery from waste incinerated	Percentage (%)	0%	0%
Customers receiving recycling	Percentage (%)	50%	50%
Customers receiving composting	Percentage (%)	27%	25%
Amount of material recycled	Metric Tons (t)	1,541,792	1,615,536
Amount of material composted	Metric Tons (t)	210,757	201,991
Amount of material processed as waste-to-energy	Metric Tons (t)	N/M	N/M
Amount of electronic waste collected	Metric Tons (t)	N/M	N/M
Percentage of electronic waste recovered through recycling	Percentage (%)	N/M	N/M

Activity Metrics

	Unit	2019	2020
Customers	Number		
Municipal Contracts	Number	2,000	2,100
Commercial	Number	600,000	720,000
Industrial	Number	100,000	135,000
Residential	Number	6,500,000	7,425,000
Other	Number	200,000	220,000
Vehicle fleet size[3]	Number	8,089	8,912
Landfills	Number	97	92
Transfer stations	Number	175	185
Recycling centers	Number	66	68
Composting centers	Number	6	7
Incinerators	Number	0	0
All other facilities	Number	342	352

[2] Waste Connections does not measure materials managed by customer type.
[3] Represents routed vehicles

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Health & Safety Policy Statement

It is Waste Connections, Inc.'s policy to conduct all operations in a safe and healthful manner. The Safety and Health of every employee is a fundamental consideration in every business decision and plan, and all reasonable precautions will be taken to protect employees from injury and illness. We are equally committed to protecting the public, company property, and our customers from events that could cause harm or economic losses due to our operations.

Our goal is to prevent the occurrence of all work-related injuries, illnesses and property losses. It is our philosophy that, by striving to eliminate unsafe conditions and actions, we will eventually achieve this goal.

In the event of occupational injury or illness our goals include:

• Prompt, quality medical care;

• Return to gainful employment;

• Prompt payment of appropriate benefits;

• Vigorous resistance of fraudulent claims.

The Waste Connections Corporate Safety and Health Manual contains specific requirements, which are based on the following principles in providing an effective safety program:

• Managers and Supervisors are responsible for the safety of operations under their control and will be evaluated according to their safety record and performance.

• A safe work environment will be provided by eliminating or controlling hazards with appropriately designed equipment and Facilities, safe operating procedures, and personal protective equipment where called for.

• All applicable safety regulations, codes and accepted work practices will be followed. Specific rules and procedures will be established and followed at every operation.

• Each employee working in operations will be medically qualified, informed of any hazards associated with his or her job and trained in safe work procedures, the use of personal protective equipment and other means intended to provide required protection.

• All employees are responsible for performing their job activities in a safe and reasonable manner and in accordance with local safety rules, any safety related instructions given to them, and the training they have received.

• All unsafe acts, conditions and incidents must be reported to Supervisors and investigated and corrected immediately.

• Employees are responsible to promptly report to their Supervisor any occupational injury or illness and to cooperate in a medical treatment plan

All employees are expected to support and participate in the Safety and Health Program. Together, through teamwork, we can eliminate workplace injuries, accidents and illnesses.

Active Behavioral Connections Standard

PURPOSE

The objective of Active Behavioral Connections (ABC) is to build a relationship between the frontline employee and their manager or supervisor that reinforces positive behaviors, eliminates risky behaviors and allows the manager or supervisor to ensure that we are consistent with our operating values of Safety, Integrity, Customer Service, Creating a Great Place to Work and that we are the Premier Company in our industry. It is the Waste Connections Way of doing business.
Waste Connections is committed to the safety of our employees and the general public. We hold no organizational value higher than safety. Waste Connections' culture of safety is built upon the safe actions of every employee and ownership of our safety values at all levels within the organization. To foster and support our culture, Waste Connections has developed a system of employee observations known as Active Behavioral Connections (ABC). The ABC system is designed to enable the manager/supervisor to connect with their frontline employees on a regular basis to ensure that we are constantly reinforcing our operating values and continuing to raise their level of awareness.

Definitions

The following is a list of approved Active Behavioral Connections to be utilized and tracked:

In-cab: Ride with the employee for a period not less than two hours during which time you are reinforcing positive behavior, coaching risky behaviors and evaluating their customer service, vehicle condition, morale, etc.

Route Shadow: Follow the employee on route for a period not less than 30 minutes during which time you will monitor their positive behavior, risky behavior, customer service, paperwork, licenses, vehicle condition, morale, etc. At the conclusion, you will meet with the employee to discuss the findings and recognize, coach or counsel as appropriate.

Post Collection Stops: Observe the employee in the process of their duties at a post collection facility (landfill, transfer station or MRF). This generally takes less than 30 minutes during which time you will monitor their positive behavior, risky behavior, vehicle condition, morale, etc. At the conclusion, you will meet with the employee to discuss the findings and recognize, coach or counsel as appropriate.

Tailgate Talks: Take an opportunity to observe the employees as they prepare themselves and their vehicles or equipment in the yard. Following the observation, you will meet with the employee to discuss the findings and recognize, coach or counsel as appropriate.

Gate Checks: Take an opportunity to greet your employees as they exit the yard to begin their workday. Discuss things like the skills to avoid Target 4 incidents, difficult stops, vehicle condition, paperwork, licenses and evaluate their morale and preparedness for the day. Recognize, coach or counsel as appropriate.

Fuel Island Stops (Cab Inspections): Take an opportunity to greet your employees as they come into the yard at the conclusion of their workday. Discuss things like difficult stops, vehicle condition, near misses or specific events from the day and evaluate their morale. Recognize, coach or counsel as appropriate.

REQUIREMENTS TO BUILD AN EFFECTIVE RELATIONSHIP WITH EACH EMPLOYEE

Each district is required to have a minimum number of Active Behavioral Connections (Employee Observations/Interactions) between the manager or supervisor and the frontline safety sensitive employee, based on the employee's category rating.

Categories of employees:

Category	Years Employed	Employment Duration Description	Behavior Criteria
A	One Year +	Employees who have been with the company greater than one year	No preventable incidents; No identified risky behaviors and No more than 8 Drivecam/3rd Eye points in the previous three months.
B	6-12 months	Employees who have been with the company more than six months, but less than one year	No preventable incidents; No identified risky behaviors **-or-** ANY driver who has: accumulated 9 - 17 Drivecam/3rd Eye points in the previous three months. Changed systems in the previous three months

Category	Years Employed	Employment Duration Description	Behavior Criteria
C	New <6 months	Employees who have been with the company less than six months or;	Any employee who has been involved in a preventable incident in the previous six months or; observed performing risky behaviors in the previous six months or; accumulated 18 or more Drivecam/3rd Eye points in the previous three months.

Frequency and type of (ABC) required by employee category type:

- Category A – Manager or supervisor will meet with the employee once a month utilizing any of the approved methods listed below. An in-cab or route shadow ABC must be completed at least once per quarter.
- Category B – Manager or supervisor will meet with the employee once a month utilizing any of the approved methods listed below. An in-cab or route shadow ABC must be completed at least twice per quarter.
- Category C – An ABC must be performed each week for; 1) new employees during their first 90 days, 2) 4 weeks following any preventable incident or 3) 4 weeks when the accumulation of 18+ Drivecam points occurs during the previous three months. Manager or supervisor will meet with the employee once a month utilizing an in-cab or route shadow for any of the 3 situations in Category C.

Target Four

At Waste Connections, our safety goals are to:

- Create the safest work environment in the industry;
- Develop a world-class culture of safety; and
- Be viewed as a great place to work.

Waste Connections' safety processes are effective. Many of you have been using these processes with great success for many years and have reaped the benefits of fewer accidents and injuries. Now is the time for us to transition to the next level of safety. It will start with a program known as the "Target Four."

The key to success in any behavior/risk based safety process is the managers and supervisors taking personal ownership. In short, the wellbeing of our employees, our company, and the public we serve and work around, depends on us doing it right and doing it safe.

The "Target Four" program is designed to reduce, eliminate and ultimately eradicate the four most frequent, serious, costly and often life-changing preventable incidents that occur in our industry. These incidents are as follows:

- Intersection collisions
- Backing collisions
- Rear collisions
- Rollovers

The goal of the program is to equip our frontline employees with a heightened level of awareness and skills needed to avoid "Target Four" incidents. As managers we must take a zero tolerance approach to these incidents. In other words, we must ensure that every employee understands the

importance of avoiding them and has the skills to do so. We must take appropriate corrective action when unsafe behaviors occur and when those unsafe behaviors result in incidents.

We are confident that these durable and proven processes, when properly executed and embraced in a disciplined and sustainable approach, will help us to realize the goals stated.

We are very excited about these tools and the team we have in place to deploy them. Waste Connections is known for having the best people, who produce the best results. We cannot and will not fail to do the right thing and create the safest organization in the industry.

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TARGET FOUR DEFINITIONS

INTERSECTION

An intersection incident is an incident that occurs where the road surfaces of two or more roads meet, such as a “T” or 4-way intersection. These can be controlled or uncontrolled and include turning into and out of driveways and entrances.

An example of an intersection incident would include two vehicles colliding while one of the vehicles is exiting an alley, a parking lot, a driveway. Another example is the traditional type of intersection incident, two or more vehicles colliding at a stop light or stop sign.

REAR COLLISIONS

A rear collision incident is when a Waste Connections vehicle makes impact with another vehicle that is traveling in the same direction as a result of the Waste Connections vehicle not being able to stop in time.

These types of incidents are generally the result of speed, driver inattention and failure to maintain a safe and proper following distance.

ROLLOVER

A rollover incident is defined as when a Waste Connections vehicle comes to rest with one or more of its wheels not having contact with the ground.

This would include a truck, which veered off the road, and although not on its side, the wheels on one side or the other are not making contact with the road surface and it requires a tow truck or other vehicle to assist in getting it upright.

BACKING

A backing incident occurs when an Waste Connections vehicle is involved in an incident while in reverse or moving backwards, regardless of the location of the driver or helper.

This would include those incidents wherein the driver exited the vehicle failing to properly set the brake and the Waste Connections vehicle rolls backward into another vehicle or property.

GUIDANCE

The reporting requirements for “Target Four” incidents include the following:

Target Four incidents (Intersections, Backing, Rear Collision and Rollover) involving losses as defined below will require immediate notification (within 2 hours) to the appropriate Region Safety Manager utilizing the reporting form.

Additionally, each incident will have a follow-up conference call scheduled within 72 hours. Required participants for the call will include the District Manager/Site Manager, Division VP, Region Safety Manager and Shawn Mandel (NOTE: the RVP, Director of Risk and others may be invited to participate on the call as optional).

ALL Target Four incidents involving any of the following will require this reporting process:

- Total incident cost exceeds $5K (includes internal and third party claim cost)
- Bodily injury requiring medical treatment
- Any vehicle Rollover incident

This reporting requirement will be in addition to the current reporting requirements as determined by the Corporate Risk Department and/or the Region.

Health and Safety Program Elements (PA-P001)

Purpose

This document describes the basic elements of the health and safety programs (HSP) for all operating locations to meet regulatory requirements and implement the company safety values.

Applies To

The Health and Safety programs in this manual apply to all Waste Connections Inc.'s subsidiaries' landfill, hauling and recycling operations.

The term landfill, hauling and recycling operations as used in these programs, means any district, facility, satellite location or other site owned or operated by the Company. Landfill, hauling and recycle operations include, but are not limited to: treatment, storage or disposal facilities, energy production facilities, transfer facilities, recycling facilities, collection and transportation operations, and bio-solids land application projects.

Company operations not covered in this manual will continue to operate under their current health and safety manuals unless notified.

HSP Program Implementation Responsibilities

The HSP Program is provided to guide the successful implementation of the company safety and compliance values. Effective safety and compliance programs are characterized by:

- Management support for the programs;
- Recognition throughout the organization that accidents and injuries to personnel can be prevented;
- Understanding that poor safety performance is an indication of deficiencies in management ability;
- Positive, proactive relations with regulatory agencies.

Management Responsibilities

Region, Division and District management are responsible and accountable for the HSP performance of each unit. The measures for accountability are: accident and injury cost control; regulatory citations and fines; and program implementation. Short-term and long-term goals must be established which reflect the unit plan for achieving continuous improvement in each measurable area.

HSP Programs should be managed just like any other critical component of the business. Program implementation should be planned and budgeted. The plan and success in implementation should be reviewed as a segment of the monthly operating review.

Employee's Responsibilities

Employees are responsible to work without injuring themselves, their co-workers, or third parties. They are also responsible to report unsafe conditions, observe the company rules and policies and to operate company equipment safely and prudently. Accidents and injuries must be reported to supervision immediately regardless of the severity of the incident.

Incentive and Disciplinary Programs

Recognition and discipline are effective tools in the promotion of safety awareness and positive behavior patterns. Incentive programs must be equitably implemented to motivate and reward outstanding safety and compliance performance. Disciplinary measures must be progressive and applied consistently with respect to the severity and frequency of the infraction.

HSP performance should be a significant component in performance evaluations and incentive and compensation decisions made for managers and supervisors (poor HSP performance will result in higher claims costs, lower productivity, and/or additional expenses for correcting problems).

HSP related misconduct includes intentional or negligent actions that cause non-compliance, or serious health or safety risks. HSP related misconduct also includes actions that deceive the company or a governmental agency regarding compliance issues. These actions are subject to the company progressive disciplinary procedure standard, which can result in termination of employment. Disciplinary actions should also address repeated errors or poor judgment leading to accidents.

Training

Personnel must be provided adequate training and/or possess sufficient experience, to work without injury or damaging facilities, equipment or property. Training required by the regulations or the company is defined in PA-004.

Program Assessments

Program effectiveness is directly related to the planning for implementation and effective use of resources. To effectively set objectives, use resources and maintain continuous improvement, one must know the current status relative to the standards. Accordingly, a requirement is established for each District to annually evaluate program status versus the standards using the assessment tool in REG-P002. A formal assessment by Corporate, or Regional safety personnel may take the place of this requirement.

Program Clarification and Regulatory Interpretation

Questions about the program requirements or regulatory interpretations should be directed to the Corporate Safety Director.

District Safety Program (PA-P002)

Purpose

The purpose of this policy is to describe the components and responsibilities for a District safety program in order to provide a safe and healthy work environment for company employees.

Typical Safety Program Description

The following is a description for a typical district safety program:

1. Major Responsibilities:

- The District will serve as the primary resource to guide the implementation of the WCI Health and safety programs.

2. Key Functions:

- Develop the District specific programs required for compliance with regulatory requirements and company policy and as required to achieve the company values.
- Conduct or arrange for the training of District personnel.
- Maintain District statistical information.
- Coordinate the investigation of accident and incidents and the settlement of District assumed claims.
- Maintain a current copy of Federal, state and local health and safety regulations.
- Coordinate the conduct of monthly facility inspections.

Safety Budget Considerations

The following budget accounts are usually associated with safety:

- Safety Bonus
- Worker Compensation Claims
- Uninsured Losses
- Safety Program Expense
- Seminars and Education
- Security
- Shop Supplies

The following items are some of the safety-related items that are most often needed at the Districts and should be considered when formulating the budget:

Vehicles and Equipment

- Back-Up Alarms – Strobe Lights
- Back-Up Cameras

- Fire Extinguishers
- Midway Turn Signals
- Roll-Off Rear Window Protection
- Forks-Up, Frame-Up, Tailgate/Body-Up Alarms/Lights
- Battery Disconnects
- In-cab Video Recording Technologies (DriveCam, 3rd Eye, etc.)

Safety Supplies

- First-Aid Kits
- Bloodborne Pathogen Kits
- Spill Response Kits
- Signs / Posters
- MVR Check annually
- Safety Manuals
- Heat Stress Relief
- Employee Handbooks and other printed documents

Personal Protective Equipment

- Respiratory Protection
- Gloves
- Backbelts
- Safety Glasses, goggles, faceshields
- Boot/Shoe Allowance
- Rain Slickers
- Hi-Visibility Vests
- Hard Hats
- Welding Leathers

Safety Programs

- Smith System Driver Training
- 901T Driver Safety Training
- New Employee Orientation, Refresher Training
- Monthly Safety Meetings
- Safety Designate Training
- Safety Incentive / Award Programs
- OSHA & DOT Regulatory Compliance Programs, Supplies, Aids, Etc.

Training Supplies

- Television(s), Projectors
- DVD Players and/or Similar Devices
- Videos, DVDs, Films, Videotape Rental
- Flipcharts / White Board
- Chairs / Tables

Medical Examinations

- D.O.T. Medical Exams
- Drug / Alcohol Testing
- Respirator Physical Exams
- Audiometric Exams
- Safety Designate Training

Regulatory Considerations

- Copies of OSHA Regulations
- Copies of Federal and State DOT Regulations

Safety Rules and Discipline Program (PA-P003)

Purpose

The purpose of this policy is to define the work and safety rules and describe the disciplinary process. The rules are established to identify acceptable and unacceptable behavior and to protect the employees, the customers, the general public and the company assets. The rules are derived from the company Employee General Policies and Benefits Handbook and Drug and Alcohol Policies.

Work/Safety Rules

In order to ensure employee health, safety and fairness, and to provide for mutual protection, the following actions on the part of the employee are contrary to the health and safety of company employees and the public. Waste Connections and its subsidiaries personnel, therefore, are prohibited from these actions:

1. Reporting to work while under the influence of alcohol or drugs. The presence in any employee of any drug or alcohol, in any amount that exceeds the threshold level established by the company, while performing company business or on company property, is a violation of these work rules.
2. Use of any illegal drug
3. Possession or storing of alcohol or drugs on company property.
4. Failure to comply with the Company's alcohol and drug free workplace policy and testing requirements.
5. Theft or unauthorized appropriation (actual or attempted) of any property or items owned by the Company, another employee or a customer.
6. Failing to report incidents and injuries to a supervisor or company official on the day of occurrence regardless of severity.
7. Fighting or attempting to inflict bodily injury upon an employee, visitor, or customer or while on duty, on Company property or at a Company function.
8. The possession or use of any weapon such as a firearm, knife, club, etc. while on Company property, in Company equipment or vehicles, at a customer location, or otherwise on duty unless authorized in writing by Management.
9. Sexually harassing an employee or customer.
10. Leaving the scene of an incident.
11. Committing a felony involving the use of a Company vehicle or equipment.
12. Negligently operating or driving a Company vehicle that was involved in an incident resulting in a fatality, serious injury or major property damage.
13. Intentionally or maliciously destroying property belonging to the Company, another employee or a customer.
14. Offenses leading to disqualification of drivers as codified in 49 CFR 383.51 or 391.15.
15. Using abusive, obscene or threatening language toward another employee or customer.

16. Failing to immediately notify the Company if the privilege to operate a motor vehicle has been revoked, suspended, denied, withdrawn or expired.
17. Failing to maintain a valid and current commercial drivers license with proper endorsements issued by one State or Province.
18. Falsifying any records, including but not limited to submitted medical statements, DOT documentation or Company records.
19. Absence for three (3) consecutive workdays without properly notifying Company management.
20. Failing to notify a supervisor or company official if unable to report for work. The employee must call in and speak to a manager. Leaving a voicemail message is not acceptable notification and will be counted as a “no-call, no-show” occurrence.
21. Tampering with a time card, or other time keeping record or device, or permitting another person to punch or tamper with your time card, or other time keeping record or device.
22. Failing to punch time card at the beginning and/or end of each work shift, unless otherwise authorized by the Company.
23. Leaving Company premises or scheduled work area/route during working hours without authorization.
24. Transporting unauthorized passengers in any Company vehicle or heavy equipment.
25. Stopping work prior to completion of shift without permission of supervisor or company official. This is considered by the Company to be a voluntary resignation.
26. Failing to comply with written or verbal instructions issued by a supervisor.
27. Riding on the rear step, or on any outside portion of the vehicle, while that vehicle is backing.
28. Driving with the hydraulic cylinders extended. For example:

a. Rear door is in raised position
b. Tilt frame raised
c. Rear load truck packing cylinder extended toward rear of unit
d. Front load truck arms must be at the proper level with the forks in an retracted position

29. Standing, walking or positioning oneself behind a roll-off truck whose tilt frame is in a raised position unless the wheels are chocked and there is no container on the tilt frame.
30. Standing, walking or positioning oneself under any raised tailgate unless the gate is blocked open.
31. Standing, walking or positioning oneself in the path of a rear swing door that is latched in the open position while the tilt frame is raised.
32. Entering the body of any vehicle unless the vehicle is locked out and all hazardous energy has been dissipated, removed and/or controlled.
33. Reversing the direction of travel, or backing up, without being aware of the location of all helpers.
34. Dismounting from any moving vehicle.
35. Disclosing, misusing or removing Company records without proper authorization.
36. Sleeping or appearing to be sleeping on duty.
37. Excessive absenteeism and/or tardiness as defined by the facility policy.
38. Packing “on-the-run."
39. Failing to notify a supervisor or company official prior to the start of the shift if any prescribed or over-the-counter medication is being taken that may affect job performance.

40. Scavenging or salvaging any item intended to be disposed of for personal acquisition or use.
41. Failing to report a known unsafe condition or an observed unsafe act to a supervisor.
42. Exceeding posted speeds.
43. Driving any vehicle declared and marked “Out of Service”.
44. Operating a motor vehicle when the following emergency equipment is not in place and ready for use.

a. A gauge readable fire extinguisher with a rating of 10 BC or more
b. Three (3) bi-directional emergency reflective triangles

45. Failing to use and complete the driver’s log on any day where the combined time between two consecutive off-duty periods of 10 hours or more exceeds 12 hours.
46. Failing to properly perform pre-trip and/or post-trip inspections of equipment, failing to inspect equipment after each loading and unloading, and/or failing to operate and maintain equipment in reasonable good appearance.
47. Failing to complete a VCR (Vehicle Condition Report).
48. Smoking except at designated smoking areas at landfills, material resource receiving and/or transfer facilities
49. Failing to wear seat belts at all times when the vehicle or piece of equipment is in operation except on manual residential collection routes. This exclusion for manual collection residential routes only applies if all of the following conditions are met:

a. The truck is solely engaged in intrastate operations,
b. State law provides a specific exemption for waste collection drivers
c. The driver is the only occupant of the cab
d. The driver is engaged in collection activity that requires exit and entry from the cab at each stop
e. The speed of travel does not exceed 10 mph, and
f. The distance traveled is less than 2/10 mile (approximately 2 city blocks) between stops requiring exiting the cab for service.

50. Operating vehicles if any tire is:

a. flat
b. leaking
c. has exposed belt or ply

51. Placing or allowing placement of decals, labels, stickers, or any other vision reducing material on windshields, mirrors or windows.
52. Making right or left turns or changing lanes without providing the proper signal.
53. Failing to use 4-way emergency flashers when:

a. It is necessary to stop the vehicle on the shoulder due to a malfunction
b. Due to a heavy load or going up an incline cause the vehicle to decrease speed
c. It is necessary to communicate your presence due to low visibility weather condition.
d. Engaging in work requiring the vehicle to travel in “creep” speed such as residential work.

54. Failing to clean debris in front of the blade at least daily.
55. Failing to clean cabs on a daily basis

56. Using the Company's radio/telephone communication system for purposes other than business or emergency.
57. Operating vehicles against traffic flow or zigzagging.
58. Pushing disabled (stuck, bogged down) vehicles.
59. Driving vehicles in convoy.
60. Loading containers whose product is smoldering or suspected of being a "hot" load.
61. Failing to keep hands and feet clear from the hopper during the cycling process.
62. Tampering with tachography, service recorders, in-cab recording devices, governors and/or safety equipment.
63. Failing to complete the company required reports or forms properly and accurately before the end of the current work shift.
64. Failing to adhere to the appropriate dress code as prescribed by the Company.
65. Loitering during work hours.
66. Doing personal work or personal business while on duty unless authorized by supervisor.
67. Soliciting during working time, unless authorized by a supervisor or company official.
68. Operating a vehicle without using the headlights.
69. Failing to wear prescribed personal protective equipment.
70. Failing to follow routing as designated or instructed.
71. Engaging in horseplay while on duty.
72. Failing to adhere to a company or site safety requirement.
73. Entering a restricted area without authorization.
74. Removing or disturbing any coverings, guards, or safety devices placed on vehicles, gears, moving equipment, or machinery except to service or repair such equipment after which all guards must be properly replaced before returning the equipment to service.
75. Altering a vehicles steering wheel or use of a steering knob.
76. Driving a vehicle with helpers on the rear step or riding on the rear step when the vehicle is driven in excess of 10 mph or the travel distance exceeds 0.2 miles between stops.
77. Failure to comply with established safe work practices or safe driving practices.

Incident/Injury Improvement

Waste Connections has established a policy to respond to preventable/at-fault incidents and injuries. This policy was put in place to identify dangerous situations and to correct unsafe behavior. Proper investigation of incidents and injuries by district management is the key to this process.

The following steps are a guideline for post incident/Injury counseling:

1. Incident/Injury Improvement Program Form: Following a preventable incident or injury, use the Incident/Injury Improvement Program form (PA-F001) to document disciplinary action, additional work observations and additional training that will be conducted. Form should be signed by supervisors and driver.

2. Observation Form: If an unsafe act is identified by a supervisor, the work/route observation form (RPT-F004 to RPT-F007 and RPT-F011) should be used to provide documentation of corrective action. The supervisor should provide immediate instruction to the employee so he/she can safely perform the task/activity.
3. Additional Training: Employees should be given additional training/retraining on any subject identified through observation or incident investigation.
4. Written Warning: After a preventable/at-fault incident or injury occurs, the employee may be placed on written warning. The written warning may outline the performance standard expected of all WCI employees.
5. Termination of Employment Employees may be terminated for failure to work safely. As a guideline, any combination of three preventable/at-fault incidents/injuries in a 12-month period is grounds for termination.

The disciplinary sequence can be modified at the discretion of Management depending upon the seriousness and / or the consequence of the transgression. Even the first violation can result in termination of employment.

Incident Repeater Policy

Waste Connections, Inc. is committed to employing professional, competent drivers with driving records that reflect their dedication to driver safety. This policy has been developed in order to define this District's standard for driver performance, and it applies to any employee who may, at any time during the course of their normal duties, operate any vehicle owned, operated, leased or rented by Waste Connections, Inc.

1. Standards of Proficiency

a. No more than four (4) moving violations in a consecutive 3 year period.
A MOVING VIOLATION IS ANY TRAFFIC TICKET (CITATION) WHICH RESULTS IN A CONVICTION AND WHICH WAS RECEIVED FOR DRIVING WHEN THE VEHICLE IS IN MOTION, BASED ON LOCAL STATE MOTOR VEHICLE LAWS. IT MATTERS NOT IF THE CITATION WAS ISSUED WHILE DRIVING A PERSONAL VEHICLE OR OTHERWISE.

b. No more than two (2) preventable incidents within a consecutive 12 month period. A preventable incident is one in which the driver failed to do everything reasonable he/she could have done to prevent the incident. There is no minimum or maximum dollar amount associated with an incident.

2. One (1) major violation and/or incident could be cause for immediate termination at management's discretion. A major violation or incident is one that demonstrates gross negligence or disregard for hazard to life or property. Examples of this are

a. Driving under the influence of drugs or alcohol.

b. Driving on a suspended or revoked license.
c. Reckless driving.
d. Hit and run.
e. Major vehicle incident.

Disciplinary Program

The principles of progressive disciplinary action will be adhered to in every case except those classified as “Major Violations and Incidents.” Progressive disciplinary action for substandard driving performance will be based on a review of the driver’s Motor Vehicle Record, personnel file and fleet incident records for a consecutive 12 month period.

The supervisor will decide how best to address concerns regarding an employee’s performance or conduct. The following steps are a guideline for performance counseling situations:

1. **Verbal Warning:** If a concern is noted by a supervisor, the supervisor may first meet with the employee to discuss the situation. A time frame may be set during which the employee will need to meet performance standards. The discussion may be noted on an Employee Meeting Notice form.
2. **Written Warning:** If standards are not met after a verbal warning, the employee may be placed on written warning. The written warning may outline the performance standard and the time frame in which the employee must correct the concern.
3. **Termination of Employment.**

The disciplinary sequence can be modified at the discretion of Management depending upon the seriousness and / or the consequence of the transgression. Even the first violation can result in termination of employment.

Guidelines for Evaluating New Drivers

1. No incidents in the last 12 months classified as preventable with property damage over $2,500, a personal injury, or a fatality
2. No preventable incidents involving major property damage (over $5,000) or serious injury to other persons in the last 3 years.
3. No more than two moving violations in the last 12 months or three moving violations in the last 2 years.
4. No license suspensions for excessive moving violations within the last 3 years.
5. No convictions for DUI (alcohol, schedule 1 drugs, or other controlled substances) during the last 5 years.
6. No felony convictions during the last 5 years.

Discipline Guidelines for Current Drivers

1. During the first three months of employment, a driver is in a probationary status and any at-fault incident can result in termination.
2. No more than three at-fault incidents within any one-year period. Suggested discipline for each at fault incident should progress as follows:

a. **1st at-fault incident – Written Warning:** For every moving violation or preventable incident, the minimum disciplinary action will be a written warning and counseling by the Operations Manager and the District Manager, and retraining and check rides. Other disciplinary action, up to and including suspension or termination if appropriate depending on the circumstances, may occur.

b. **2nd at-fault incident – Three Day Suspension Without Pay:** For two preventable incidents, the minimum disciplinary action will be a written warning and counseling by the Operations Manager and the District Manager, and retraining and check rides. Other disciplinary action up to and including suspension or termination if appropriate depending on the circumstances, may occur.

c. **3rd at-fault incident – Termination:** For three (3) preventable incidents within a 12 month period or five (5) moving violations in a three (3) year period, the minimum disciplinary action will be termination. Reclassification to a non-driving position is not acceptable as an alternative to termination.

3. Any driver that has an at-fault incident, resulting in more than $2,500 worth of property damage, an injury or a fatality will be put on probation for a six-month period. Any work rules violation or at-fault incident during the probationary period will result in termination.
4. Any driver that is ***charged*** with a work-related Driving Under the Influence of Alcohol or a Controlled Substance (DUI) is suspended without pay until the resolution of his/her court case.
5. Any driver that receives a ***conviction*** for a non-work related offense (off duty) that is alcohol related (ex: DUI is plead down to “wet and reckless”) will be placed on a one-year probation and must attend our Employee Assistance Program (EAP). Any work rules violation or at-fault incident during the probationary period will result in termination.
6. Any driver that receives a conviction for a work related offense (on duty) that is alcohol related will be terminated.
7. Any DUI ***conviction*** will result in immediate termination.

Training and Safety Meetings (PA-P004)

Purpose

The purpose of this policy is to provide guidance on the conduct and required documentation for employee training to ensure employees are properly informed and educated on proper workplace procedures and the identification of safety and health hazards.

Requirements

1. Provide orientation training for employees prior to initial job assignment and when an employee changes jobs.
2. Conduct Safety meetings at least once per month to provide refresher training
3. Document training (PA-F002, *Employee Training Record*, for initial training and PA-F003, *Safety and Training Meeting Record*, for safety meetings).
4. Provide make-up training sessions to assure complete employee attendance. Make-up training must have the same content as the original training.

Reference

USA

The following list identifies training required by the Occupational Safety and Health Administration (OSHA). This list is taken from OSHA Appendix H: Training Requirement References for General Industry and Construction.

General Industry 29 CFR 1910
Personnel covered by the general industry requirements may also be covered by the construction standards when performing construction activities.

- Employee Emergency Plans and Fire Plans 1910.38(a)(i)(ii)(iii), 1910.38(b)(4)(i)(ii)
- Operations Training 1910.66(i)(ii through iv)
- Care and Use appendix C, Sec. 1 1910.66(e)(v)(i)
- Personal Protection 1910.94(9)(I), 1910.94(9)(vi)
- Inspection Maintenance, and Installation 1910.94(11)(v)
- Hearing Protection 1910.95(I)(4)
- raining Program 1910.95(k)(i)
- Ionizing Radiation 1910.96(I)
- Testing 1910.96(3)(viii)
- Flammable and Combustible Liquids (1910.106(b)(5)(vi)(v)(2)and(3)
- Explosives and Blasting Agents 1910.109(d)(3)(i)
- 1910.109(d)(3)(iii)
- 1910.109(g)(3)(iii)(a)
- 1910.109(g)(6)(ii)
- Bulk Delivery and Mixing Vehicles 1910.109(3)(d)(iii)

- Storage and Handling of Liquefied Petroleum Gases 1910.110(b)(6)(12)(i)
- 1910.111(b)(13)(ii)
- Process Safety Management of Highly Hazardous Chemicals 1910.119(g)(1)(i)and(ii) and 1910.119(g)(3)
- Contract Employer Responsibilities 1910.119(h)(3)(ii)(iii)(iv)
- Mechanical Integrity 1910.119(j)(3)
- Hazardous Waste Operations and Emergency Response 1910.120(e), 1910.120(o)(i), 1910.120(p)(8)(iii), 1910.120(q)(4), 1910.120(q)(5), 1910.120(q)(6)(i)(ii)(iii)(iv)(v)
- Respiratory Protection 1910.134(a)(3) 1910.134(b)(3)
- Control of Hazardous Energy (lockout/tagout) 1910.147(a)(3)(ii)
- Medical Services and First-Aid 1910.151(a)(b)
- Fire Protection 1910.155(iv)(41) • Fire Brigades 1910.156(b)(1)
- Portable Fire Extinguishers 1910.157(g)
- Fixed Extinguishing Systems 1910.160(b)(10)
- Fire Detection Systems 1910.164(c)(4)
- Powered Industrial Trucks 1910.178
- Mechanical Power Presses 1910.217(e)(3)
- Oxygen-Fuel Gas Welding and Cutting 1910.253(a)(1)(4)
- Arc Welding 1910.254(a)(3)
- Resistance Welding 1910.255(a)(3)
- Hazard Communication 1910.1200
- Bloodborne Pathogens 1910.1030(g)(2)(i)through(ix)
- Occupational Exposure to Hazardous Chemicals in Laboratories 1910.1450(f)(4)(I)(C)
- Permit Required Confined Space Entry 1910.146(g)(1); (or as shown in 1926.21 below)
- Heat Stress / Cold Stress OSHA General Duty Clause

Construction 29 CFR 1926

Construction personnel may also require training per the General Industry requirements.

- General 1926.21
- Medical Services and First Aid 1926.50(C)
- Compressed Air 1926.803(a)(1)and(2)
- Fire Protection 1926.150(a)(5), 1926.352(e)
- Hand tools 1926.302(e)(1)(2)
- Gas welding & cutting 1926.350(d)
- Arc Welding 1926.351(d)(1-5)
- Scaffolding 1926.451(a-d)(g,h,k)
- Hoists 1926.552(a)
- Material handling equipment 1926.602(c)(i)
- Excavations 1926.605(I)
- Overhead cranes 1926.955(b)(3)

- Ladders 1926.1053(b), 1926.1060

  Federal Highway Administration, DOT Transportation 49 CFR 382

- Substance Abuse Training 49 CFR 382.601 (a)
- Entry-level Driver Training Requirements 49 CFR 380.503

Safety Committees (PA-P005)

Purpose

The purpose of this policy is to describe the function and conduct of a District safety committee.

General

Safety committees are instituted to provide employee participation in the safety program and to help identify unsafe conditions. The express purpose of the committee is to deal with matters of safety and not with conditions of employment. The committee will gather and disseminate information without specific proposals to be adopted or acted upon by management.

The committee exists for the sole purpose of gathering and disseminating information.

Organization

1. The committee should be composed of an employee from each of the functional areas on the facility (e.g. maintenance, drivers, office, and operations) and a representative of management.
2. The committee members will serve on the committee for one year. When the committee is initially formed half the committee will serve for only 6 months.
3. A committee member should not succeed himself. A minimum period of 1 year should be observed to provide opportunities for a greater number of people to participate in the program.
4. In the event of a vacancy, a new member will be appointed by the committee to complete the term of office.
5. The committee will select a chairperson and recording secretary.
6. Meeting frequency will be determined by the committee, but will be held a minimum of once a month.
7. The date, hour, location and agenda for the meetings will be determined by the committee in conjunction with operations and posted one week prior to the meeting.
8. The length of each meeting will vary by location. The committee should allow a minimum of 1 hour for the Accident/Injury Reviews, new business and old business. Additionally, a minimum of 1 hour should be allowed for facility and vehicle inspections.
9. Minutes of the meeting should contain the names of attendees and a summary of the discussion.
10. Copies of the minutes should be provided to management and be posted on the board for employee review.

Activities

Safety committees typically perform functions such as:

1. Conduct facility, vehicle and equipment safety inspections with appropriate supervisor(s).
2. Assist in accident investigation to uncover trends.
3. Review accident reports to determine methods to identify causal factors.

4. Safety committees typically do not determine accident preventability, as that is a function of the management team.
5. Promote and publicize safety.

Safety committees do not discuss bargainable issues, or any issues related to collective bargaining agreements.

Meeting Plan

1. Ensure that all members are aware of the time and place of the meetings. A sign-off sheet attached to the meeting announcement provides the best documentation.
2. To enhance the effectiveness of the committee, attendance is considered to be mandatory for all committee members.
3. Set the preliminary agenda for the next meeting before ending the current meeting. Bargainable issues are not to be discussed.
4. When possible, handouts, pictures, diagrams, or posters to illustrate topics and concerns should be used.

Recommended Agenda

1. Call to order - the chairperson calls the meeting at a specific time.
2. Approval of Minutes - the minutes of the prior meeting are read and reviewed and then approved with any changes noted by the committee secretary.
3. Old Business - discussion and progress report on issues that have been raised at previous meetings. Receive status reports from persons assigned to follow issues to resolution.
4. New Business - Discussion of new or recent issues. A plan for action is developed and a person appointed for follow-up of the issue. Facility inspections - Divide the group equally and have one group perform a facility inspection while the other group inspects vehicles.
5. Meet as a group to discuss findings.
6. Review Incident and accident, injury, hazard observation and inspection reports.
7. As the report is reviewed a course of follow-up action is determined. The committee should be looking for trends or common causal factors.
8. Any special requests or unusual business is discussed and acted upon.
9. Adjournment - The chair adjourns the meeting, after determining the date and time of the next meeting and developing a tentative agenda. The committee secretary records the time the meeting ends.
10. Follow-up - Meeting minutes are typed, posted and distributed to appropriate individuals.

Safety Meeting Annual Schedule

Training materials provided for each training topic.

	Collection	Shop	Office	Post Collection
January	Slips/Trips/Falls Housekeeping	Slips/Trips/Falls Housekeeping	Slips/Trips/Falls Housekeeping	Slips/Trips/Falls Housekeeping
February	Emergency Action Plans Fire Extinguishers	Emergency Action Plans Fire Extinguishers	Emergency Action Plans Fire Extinguishers	Emergency Action Plans Fire Extinguishers
March	Incident Reporting/Procedure Safety Belts Video - What To Do If You Are In An Accident	Incident Reporting/Procedure Safety Belts Video - What To Do If You Are In An Accident	Incident Reporting/Procedure Safety Belts Video - What To Do If You Are In An Accident	Incident Reporting/Procedure Safety Belts Video - What To Do If You Are In An Accident
April	Hot Weather/Heat Illness Material Handling	Hot Weather/Heat Illness Material Handling	Hot Weather/Heat Illness Material Handling	Hot Weather/Heat Illness Material Sorting & Baling Operator Safety Material Handling
May	Lock Out/Tag Out - Except Oregon & Washington Sites Confined Space- Except Oregon & Washington Sites	Lock Out/Tag Out - Except Oregon & Washington Sites Confined Space- Except Oregon & Washington Sites	Lock Out/Tag Out - Except Oregon & Washington Sites Confined Space- Except Oregon & Washington Sites	Lock Out/Tag Out Confined Space
June	Respiratory Protection Hearing Conservation	Respiratory Protection Hearing Conservation	First Aid	Respiratory Protection Hearing Conservation

	Collection	Shop	Office	Post Collection
July	Hours of Service Driver Wellness	Cranes/Hoists/Slings/ Chains	Stress Management	Post Collection Inspection Asbestos
August	Bloodborne Pathogens Employee Rights to Access Records Form Spill Response	Bloodborne Pathogens Employee Rights to Access Records Form Spill Response	Bloodborne Pathogens Employee Rights to Access Records Form Spill Response	Bloodborne Pathogens Employee Rights to Access Records Form Spill Response
September	Cold Stress Winter Preparation	Cold Stress Electrical Safety Winter Preparation	Cold Stress Electrical Safety Winter Preparation	Cold Stress Electrical Safety Trenching Winter Preparation
October	Driving in Adverse Weather Distracted Driving	Weld/Cut/Brazing Powered Platforms Distracted Driving	Ergonomics & Stretching Distracted Driving	Ergonomics & Stretching Distracted Driving Powered Industrial Platforms
November	Hazard Communication	Hazard Communication	Hazard Communication	Hazard Communication
December	PPE Personal Protective Equipment Hazard Evaluation	PPE Personal Protective Equipment Hazard Evaluation	PPE Personal Protective Equipment Hazard Evaluation	PPE Personal Protective Equipment Hazard Evaluation

Waste Connections PM Program Overview

PM Training

- What is Preventative Maintenance?
  - **Preventive Maintenance is a schedule of planned maintenance actions aimed at the prevention of breakdowns and failures.**
  - **Preventive Maintenance (PM) is based on a cause-and-effect relationship between scheduled maintenance and operating reliability.**

PM Training

MAINTENANCE TEAM
TAKING IT TO THE NEXT LEVEL

Preventive Maintenance Schedule - Waste Connections, Inc.				
PM Name & Type	Days Interval Standard Oil	Days Interval Extended or Synthetic Oil	Hours Interval	Oil Sample Requirement
PM A - Lubrication	21 Days	N/A	150, 175, 185, 195	NA
PM B - Diesel - Lube, Oil, Filters = 15/40	42,63,84,105,126,147 Days	Spare unit 357 days 500 hours	300, 350, 400,450-500.600,700	At time of Oil Change
PM B - Diesel or CNG Lube, Oil, Filters = 10/30	147 or 168 Days	NA	700 or 900	Mid-Drain Sample 350 or 450
PM C - Auto Transmission	168 - Dextron 111/Mercon	714 - TransSynd (synthetic)	N/A	NA
PM D1 - Hydraulic Filter / Sample	168	N/A	N/A	Every 168-Days
PM D2 - Rear End	357 - All Purpose Gear Oil - 85W/140	1092 - SynGear Oil - 80W140	N/A	NA
PM D3 - Adj Intake & Exhaust Valves	714	Or manufacturer specs	Or manufacturer specs	NA
PM D4 - Winterization	357	N/A	N/A	NA
PM E - DOT/BIT	357	N/A	N/A	NA
PM F - Rods & Mains	714	Or manufacturer specs	Or manufacturer specs	NA
PM G - Trailer	Hydraulic / Motorized - 42 days	Non Hyd/ Non motorized - 84 days	N/A	NA
PM H - Hydraulic Oil Change	357 Non Synthetic	903 Synthetic	N/A	At time of Oil Change or 168-days
PM L - License Renewal	357	N/A	N/A	NA
PM M - Manual Transmission	357 Non Synthetic	1806 - Synthetic	N/A	NA
PM PU - Pick Up	42, 63, 84, 105, 126 days for 3-5,000 miles		147, 168 days for 7,000 miles syn	NA
PM E1 - DPF Filter Service	357 Days	N/A	N/A	NA
PM Y - Forklift/Manlift and Scissorlift	A=84 day 100 hours = B=168 day 250 hrs. PM-E = 357 day or 1,000 hrs. PM-F = 714 day or 2,000 hrs.	N/A	N/A	NA
Hydraulic Hose PM Service - (optional service)	462-days & 546-days & 903-days	N/A	N/A	NA
Automated Arm	Included with your PMA & PMB Service	N/A	N/A	NA
CNG Tank Certification	1092	Or 36,000 Miles or 58k KM	N/A	NA
Periodic Safety or Safety Compliance Insp.	Quebec = 4-months	N/A	N/A	NA
Periodic Safety or Safety Compliance Insp.	British Columbia & Manitoba = 6-months	N/A	N/A	NA
Periodic Safety or Safety Compliance Insp.	COMAR = 6-months	N/A	N/A	NA
Periodic Safety or Safety Compliance Insp.	Alberta & Ontario 12-months	N/A	N/A	NA

PM Training

- How do we know when a PM is due?
  - RTA using engine hours and days
  - Oil analysis results
  - Major component rebuild/replacement

PM Training

- Why do we do PM's?
  - The primary goal of preventive maintenance is to help prolong the life of the vehicle and reduce vehicle failures therefore providing a worry free driving experience.
  - Maintain the safety aspect set forth by the OEM.
  - Maximize the return to our investors.

PM Training

- **Who has the most important job in the shop?**

Pacific Disposal

Customer Service Training Manual

Updated 08/24/2021

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ASSIGNMENT AND CONSENT
FRANCHISE AGREEMENT

THIS ASSIGNMENT AND CONSENT (this "Agreement") is made this [____] day of June, 2022, by and between the CITY OF MILPITAS, a municipal corporation (the "City"), MILPITAS SANITATION, INC., a California corporation (the "Contractor"), and WASTE CONNECTIONS US, INC., a Delaware corporation ("Waste Connections"), collectively, "the Parties," with reference to the following:

A. The City and the Contractor are parties to that Franchise Agreement for Collection of Solid Waste and Collection and Processing of Recyclable Materials and Organic Materials, dated December 8, 2016, as such has been amended from time to time (the "Franchise Agreement");

B. The Contractor, Waste Connections and other parties have entered a Securities Purchase Agreement, dated April 27, 2022 (the "Purchase Agreement");

C. At a closing (the "Closing") to be held on or about July 1, 2022, in accordance with the Purchase Agreement, the current shareholders of Contractor will sell all the shares in the Contractor (the "Contractor Shares") to Waste Connections, which will result in a change in majority control of the Contractor from the current owners of the Contractor; and

D. The Parties wish to document the terms and conditions upon which the City relies in consenting to the sale of the Contractor Shares to Waste Connections (the "Assignment"), and to confirm the status of the Franchise Agreement, on the terms herein.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants hereinafter set forth and other consideration the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. Consent to Assignment. From and after the Closing, the Contractor shall continue to possess all of its right, title and interest in the Franchise Agreement. The Contractor hereby agrees to keep, perform, fulfill and be bound by all of the terms, covenants and conditions required to be kept, performed, and/or fulfilled under the Franchise Agreement from and after the Closing.

2. Condition to Approval. As a condition of the City's approval of the Assignment, Waste Connections, the Contractor and the City agree as follows.

(a) Waste Connections' Acquisition Costs. Waste Connections agrees that amounts it pays to the current owners of the Contractor under the Purchase Agreement or any other costs incurred by the Contractor or Waste Connections in acquiring or selling stock or real property under the Purchase Agreement shall not, in calculating rates or adjustments to rates, be considered as an expense or otherwise affect rates charged by the Contractor for performing waste collection services in the City pursuant to the Franchise Agreement.

(b) Payment of Assignment Fee. Contractor shall pay the City an assignment fee equal to [insert total amount] as required by Section 12.6 of the Agreement upon the closing of the sale of the Contractor Shares. Contractor understands and agrees that this payment include

an additional One Hundred Fifty Thousand Dollars ($150,000) in addition to the two percent of Gross Receipts (as defined in the Franchise Agreement) required under the Franchise Agreement.

3. Additional Obligations. Waste Connections and the Contractor hereby affirm and warrant:

(a) that Waste Connections has at least ten (10) years of Solid Waste Transfer and Disposal management experience on a scale equal to or exceeding the scale of operations conducted by the Contractor under this Agreement;

(b) that in the last five (5) years, Waste Connections has not been the subject of any administrative or judicial proceedings initiated by a federal, State or local agency having jurisdiction over its operations due to an alleged failure to comply with federal, State or local laws;

(c) that Waste Connections conducts its operations in a safe and environmentally conscientious manner; and

(d) that Waste Connections conducts its operations in accordance with sound Solid Waste management practices in full compliance with all federal, State and local laws regulating the Transfer and Disposal of Solid Waste and all Environmental Laws.

4. Franchise Agreement in Effect. The Franchise Agreement is in full force and effect and, except as provided herein, has not been modified, altered or amended in any respect and contains the entire agreement between the City and the Contractor with respect to the subject matter thereof. Any breach of this Agreement shall be a breach of the Franchise Agreement.

5. Governing Law. This Agreement shall be governed by, and interpreted and enforced under, the laws of the State of California, without giving effect to conflict of laws principles. Venue shall be as provided for in the Franchise Agreement, which provision is incorporated by reference.

6. Fourth Amendment to Franchise Agreement. City and Contractor are concurrently executing that certain Fourth Amendment to the Franchise Agreement, which is incorporated by reference. City's consent to the Assignment is expressly conditioned on Contractor's execution of the Fourth Amendment in the form approved by City. Contractor's failure to do so prior to the Closing shall void this Agreement.

7. Counterparts. This Agreement may be signed in three (3) or more counterparts, each of which shall be deemed an original but when taken together shall constitute one and the same instrument. Counterparts may be sent for signature by email. Signatures on PDF copies thereof shall be deemed original signatures for all purposes and such PDF copies shall be admissible as evidence of the agreement in any and all administrative or judicial proceedings.

8. No Third-Party Beneficiaries. The Parties intend this Agreement for the sole benefit of the Parties and do not intend to confer any rights under this Agreement or any right to enforce this Agreement on any person or entity who is not one of the Parties.

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

CITY OF MILPITAS

By: _____
Name:
Title:

Date: _____

APPROVED AS TO FORM:

By: _____
Name:
Title:

Date: _____

APPROVED AS TO CONTENT:

By: _____
Name:
Title:

Date: _____

MILPITAS SANITATION, INC.

By: _____
Name:
Title:

Date: _____

WASTE CONNECTIONS US, INC.

By: _____
Name:
Title:

Date: _____

FOURTH AMENDMENT TO FRANCHISE AGREEMENT

THIS FOURTH AMENDMENT TO FRANCHISE AGREEMENT (the "Amendment"), for reference purposes dated _____, is made and entered into by and between the City of Milpitas ("City"), and Milpitas Sanitation, Inc. ("Contractor").

WHEREAS, City and Contractor entered into that Franchise Agreement between City of Milpitas and Milpitas Sanitation, Inc. for Collection of Solid Waste and Collection and Processing of Recyclable Materials and Organic Materials dated December 16, 2016, as amended by the First Amendment to Franchise Agreement dated March 21, 2017, the Second Amendment to the Agreement dated October 17, 2017, and the Third Amendment to the Agreement dated November 29, 2018 (collectively, the "Agreement"); and

WHEREAS, Section 13.4 of the Agreement provides that any amendment of the Agreement must be in a writing executed by the parties; and

WHEREAS, City and Contractor desire to amend the Agreement to modify certain provisions and make certain other changes.

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Figure 4-1 in Article 4 is hereby amended to revise the row entitled "Single-Family Premises with 1-4 units" as follows:

Single-Family Premises with 1-4 units	Split-Carts: {Solid Waste / Food Scraps)/ unit Total Capacity: 38-gal, 45-gal (64-gal cart with 26-gal insert solid waste), 64-gal, 96-gal Food Scraps Capacities: 19-gal (38-gal cart with solid waste insert) and 29-gal (96-gal cart) Solid Waste Cart: 96-gal Food Scrap Cart: 21-gal	None

2. Item "Containers" set forth in Section 4.1.A of the Agreement is amended to read in full as follows:

   "Containers: Contractor-Provided Carts and split-Carts {Solid Waste/Food Scraps}"

3. Item "Container Sizes" set forth in Section 4.1.A of the Agreement is amended by adding the underlined below to that Section:

   "…The 64-gallon split-Cart will have 45 gallons of solid waste capacity and the 96-gallon split-Cart will have 67 gallons of solid waste capacity. 96-gallon Carts with a dedicated 21-gallon Food Scraps Cart. The default Solid Waste split-Cart shall be 64 gallons."

4. Item "Other Requirement" set forth in Section 4.1.B of the Agreement is amended by adding the underlined below to that Section:

   "Other Requirements: Contractor shall accept household batteries in the Recyclables Materials program. Batteries to be collected in a bag placed on the cart. Contractor shall collect oversized cardboard that is flattened and cut into sections no larger than 3ft x 3ft and bundled or neatly stacked next to the recycling cart."

5. Item "Containers" set forth in Section 4.1.C.2 of the Agreement is amended to read in full as follows:

   "Containers: Contractor-Provided Carts, Split-Carts {Solid Waste (described in Section 4.1.A/Food Scraps} and 2-gallon kitchen pails."

6. Item "Container Sizes" set forth in Section 4.1.C.2 of the Agreement is amended to read in full as follows:

   "Container Sizes: 64-gallon or 96-gallon split-Carts {Solid Waste/Food Scraps}, 19-gallon Cart (as requested by Customer). The default Food Scraps Cart shall be the 64-gallon split-Cart. 64-gallon Cart provides 19-gallons of Food Scraps capacity and the 96-gallon Cart provides 29 gallons of Food Scrap capacity."

7. Item "Service Level" in Section 4.1.F and 4.2.D of the Agreement is amended to replace "one (1)" with "three (3)" and clarify how additional material can be set out for collection as set forth below:

   "Service Level: Up to three (3) cubic yards of Solid Waste, Recyclable Materials, Organic Materials, Reusable Materials, C&D, and E-Waste OR up to three (3) Appliances or Bulky Items. Customer shall have the option of setting out up to three (3) cubic yards in the equivalent number of garbage bags (e.g., six (6) 96-gallon trash bags). Additionally, Contractor shall cease requiring and providing "White Bags" for bulky item pick-ups."

8. Item "Other Requirements" in Section 4.1.F of the Agreement is amended by adding the underlined below to that Section:

   "Other Requirements: Contractor shall offer a "Voucher Program" as an alternative to the On-Call Curbside Bulky Item/Reuse Materials Collection. The Voucher will allow a Customer to self-haul and dispose any Acceptable Materials including concrete at the Mission Trail Waste Systems, Inc. Transfer Station in Santa Clara, or other City approved facility, during normal business hours."

9. Item "Unscheduled Service" in Section 4.15.B.2 is amended to replace "11,000" with "12,500" as set forth below:

   "Contractor shall sweep up to 12,500 Curb Miles per calendar year, including both scheduled service and unscheduled service."

10. Sections 8.D and 8.E are hereby added to Exhibit B to read in full as follows:

    "D. Host two (2) compost giveaway events per year within the City at locations designated by City. Attendees at each event may pick up to four (4) 1.5 cubic feet bags of compost per event. Contractor shall provide at least 3,200 bags of compost for each event.

    E. Deliver up to one hundred (100) 1.5 cubic feet bags of compost to a location designated by City once each month. Compost can be picked by City residents at each location."

11. Section 4.6 of the Agreement is hereby amended by adding the following language to that section:

    "Special event services include but are not limited to: 4th of July Event, Holiday on Main Street, and other events identified and approved by City Contract Manager."

    Additionally, Contractor shall support and provide containers and collection service for an initial six (6) Neighborhood Clean Up events per calendar year. Contractor shall coordinate with City to determine the number of debris boxes that will be delivered per event, delivery time, and removal time. Contractor shall deliver collected materials to an Approved Facility. Contractor agrees to increase this to up to twelve (12) Neighborhood Clean Up events per year based upon utilization and participation by the community. The City and Contractor agree to monitor this service to ascertain compliance with applicable State of California requirements."

12. The costs associated with the service and other changes in this Amendment will be included in the Actual Allowable Total Annual Cost of Operations for the next cost-based Rate adjustment under the Agreement (i.e., for Rate Period Eight).

13. This Amendment will become effective only upon City's consent to the assignment resulting from the sale of Contractor's outstanding shares of stock to Waste Connections US, Inc. and the closing of such sale.

14. Except as otherwise modified by this Amendment, the Agreement remains in full force and effect.

CITY OF MILPITAS

By: _____
Name:
Title:

Date: _____

APPROVED AS TO FORM:

By: _____
Name:
Title:

Date: _____

APPROVED AS TO CONTENT:

By: _____
Name:
Title:

Date: _____

MILPITAS SANITATION, INC.

By: _____
Name:
Title:

Date: _____

WASTE CONNECTIONS US, INC.

By: _____
Name:
Title:

Date: _____

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Rescind Resolution No. 9171 and Approve a Resolution Submitting to the Qualified Voters of the City of Milpitas a Measure Amending Chapter 400 (Mayoral and Councilmanic Term Limits) of Title 1 (Administration) of the Milpitas Municipal Code to Amend Term Limits on Mayoral and City Council Member Service, at a General Municipal Election to be Consolidated with the Statewide General Election to be Held November 8, 2022, and Setting Rules for Arguments and Rebuttals for and Against Said Measure(Staff Contact: Michael Mutalipassi, City Attorney, 408-586-3040)**
Category:	Leadership and Support Services
Meeting Date:	6/21/2022
	Recommendation: (1) Motion to rescind Resolution No. 9171. (2) Determine whether the Council wishes to print the text of the ballot measure at a cost of $8,482 per page. (3) Motion to approve a Resolution Submitting to the Qualified Voters of the City of Milpitas a Measure Amending Chapter 400 (Mayoral and Councilmanic Term Limits) of Title 1 (Administration) of the Milpitas Municipal Code to Amend Term Limits on Mayoral and City Council Member Service, at a General Municipal Election to be Consolidated with the Statewide General Election to be Held November 8, 2022, and Setting Rules for Arguments and Rebuttals for and Against Said Measure.

BACKGROUND:

Term limits were adopted by the voters on May 17, 1996, which added Milpitas Municipal Code section I-400. The Municipal Code specifies that a person may serve a maximum of 3 consecutive elective terms as either a City Councilmember or as the Mayor. However, a person can extend out these terms if they are a Councilmember who is elected to Mayor or the Mayor who is elected to a City Council seat. Under this latter scenario, a person can serve a combined total of no more than 4 consecutive elected terms. The present term limits leave the total service time for consecutive terms served by Councilmembers incongruent with the total service time for consecutive terms served by the mayor. Under the current term limit code, a Councilmember could serve for 14 consecutive years before he or she is required to take a 2-year cooling off period. The Mayor may only serve for 10 consecutive years before he or she must take a 2-year cooling off period.

At the August 4, 2020, City Council meeting, the City Council voted to discuss the possibility of pursuing a change to the term limits applicable to the Mayor and the City Council. At the March 16, 2021 City Council meeting, the City Council voted to agendize a discussion to change the term limits. At the March 16, 2021, meeting, Mayor Tran also requested information related to potentially eliminating the position of the directly elected Mayor in favor of a rotational Mayor position amongst all councilmembers. At the April 5, 2022 City Council meeting, the City Council decided to change the term limits for the Councilmembers from 3 4-year terms to 2 4-year terms but could not reach a consensus with regard to the mayoral terms. The Council requested further information concerning mayoral term limits. At the May 10, 2022 council meeting, the Council directed staff to bring back a draft resolution changing the Councilmember term limits but leaving the Mayoral term limits intact.

In order to change the term limits, a ballot measure needs to be proposed by the City Council and approved by voters. The process of putting forth a ballot measure requires the Council to adopt a resolution to put the measure before the qualified voters of the City.

On June 7, 2022, the Council voted unanimously to approve Resolution 9171 to submit an ordinance to the voters of the City of Milpitas that would shorten councilmember term limits to 2 consecutive 4-year terms

followed by 1 2-year mayoral term. After that meeting, City staff was confronted with potential issues in the ordinance. Upon further evaluation, staff determined that under both the term limits adopted in 1996 and the proposed term limits in Resolution 9171, a person may be in elected office by serving non-consecutive terms. A person could arguably serve as councilmember, then mayor, then councilmember, then mayor, then councilmember, then mayor, and so on into perpetuity without ever serving consecutive terms. Since both the existing and proposed term limits are concerned with consecutive terms of a single office, the official switching back and forth between these two offices would never trigger the applicable term limit.

The matter is now being brought to the Council to consider a 10-year term limit that would not allow for this type of non-consecutive gamesmanship.

ANALYSIS:

California Government Code section 36502(b) authorizes a general law city, such as the City of Milpitas, to limit the number of terms an elected Mayor or City Councilmember may serve. This State law outlines two principal rules:

- *A local term limits measure must be "prospective*". It may only apply to new Mayoral/Council terms that were voted upon at the same election as the measure, or terms voted upon at a later election. For example, a term limits measure passed at the November 8, 2022 General Municipal Election could apply to new terms elected at that same election and to those new terms elected in November 2024, 2026, etc. However, it could not apply to terms elected two years earlier at the November 3, 2020 General Municipal Election. That would make the measure impermissibly "retroactive" rather than "prospective".

- *A local term limits measure requires voter approval.* It must be submitted to City of Milpitas voters at a "regularly scheduled election" and obtain majority voter approval. Under case law, a "regularly scheduled election" means (i) a statewide primary election, (ii) a statewide general election or (iii) a general municipal election. The next Statewide General Election will be held on November 8, 2022, which also coincides with the City's next General Municipal Election. Staff notes that most cities schedule term limits measure elections to coincide with their Council elections. Because term limits measures require voter approval, the State Elections Code for local measures applies. Such a measure may be placed on the ballot by either a citizens' initiative petition, signed by least 10% of the City's registered voters, or by City Council majority action to call the measure for election. Once placed on the ballot, the City Attorney will prepare an impartial analysis of the measure and interested persons may submit written arguments for or against the measure, to be included in the voter information guide as provided by State Elections Code.

Beyond these two principal rules, how a term limits measure is ultimately written is left to local policy. At the direction of this Council, the attached ordinance was drafted for the consideration of the voters. The ordinance would no longer require consecutive terms in any single office. Beginning in 2022, all elected officials would be subject to a term limit of 10-years of consecutive service as either a Councilmember or as the Mayor. Officials would be further restricted such that they could serve no more than 6 cumulative years as mayor during that 10-year period. After an official has exhausted her 10-year term, she must serve a 2-year cooling off period before running for either Council or to be Mayor. This change will prevent individuals from serving an indefinite number of non-consecutive terms as Councilmember and then Mayor.

Section I-400-3(C) of the draft ordinance sets forth the transitional rules for the Mayor and Councilmembers who are currently in those seats when the new code goes into effect. Under these transitional rules, the term limits do not reset upon the effective date of the new code. Thus, a Mayor who has served by election or appointment the terms beginning in years 2016, 2018, and 2020, may not run for mayor in 2022. That person may run for Council in 2022 but must take a two-year cooling off period after serving those consecutive terms. Likewise, a Councilmember who has served for the entirety of the terms beginning in 2016 and 2020 may run for a single Mayoral term before taking a cooling off period. Should a Councilmember who has served terms beginning in 2016 and 2020 be elected mayor in 2022, that Councilmember may serve two mayoral terms before taking a cooling off period. A Councilmember who has served for the term beginning in 2020 may run

for one Council term and a Mayoral term, or three Mayoral terms. These transitional term limits keep the new code in line with the term limits previously in place and ensure that the members currently serving on the council will continue to follow the same rules as everyone else.

Additionally, the Council may, but need not, choose to print the text of the entire text of the ordinance in the County Voter Information Guide ("CVIG"). It is generally advisable to print the entire text for complex or potentially confusing measures. This particular ordinance appears to be neither complex nor confusing. The ballot language is simple and straightforward. The cost to print the ordinance language in the CVIG is estimated at $8,482 per 800-word page. The ordinance is 2,030 words. The estimated cost to print the entire ordinance in the CIVG is $25,446. Should the Council decide not to print the ordinance in the CVIG, a note will be included therein that the entire ordinance can be requested from the City Clerk. An impartial analysis of the ordinance will be included in the CVIG whether or not the Council decides to include the entire text.

POLICY ALTERNATIVE(S):

Alternative 1: Do not adopt the resolution to submit the term limit issues to the voters.

Pros: None.

Cons: The term limits will not apply to an elected official who serves non-consecutive terms as Councilmember and Mayor into perpetuity.

Reason for Not Recommending: The Council should fix the flaw in the term limit scheme that allows a person to serve indefinitely by not triggering the limit while serving non-consecutive terms.

FISCAL IMPACT:
There is no additional impact beyond that incurred in the approval of Resolution 9171. These are the estimated expense of placing the item on the November ballot, which is $80,000 to have the Santa Clara County Registrar of Voters conduct the election. Those costs include $73,475 for the election and $5,909 for the publication of the required impartial analysis. In addition, the text of the measure can, but need not, be printed at a cost of $8,482 per page for an additional cost of $25,446. This amount may be funded by the FY2022-23 General Fund Unanticipated Expenditures Reserve.

California Environmental Quality Act (CEQA):
The City Council's action in adopting a resolution placing the item on the ballot for a general election is not a project subject to the California Environmental Quality Act (CEQA) as it is more akin to general organizational or administrative activities of the City that will not result in direct or indirect physical changes in the environment pursuant to CEQA Guideline 15378(b)(5).

RECOMMENDATION:
1. Motion to rescind Resolution No. 9171.
2. Determine whether the Council wishes to print the text of the ballot measure at an additional cost of $8,482 per page. (3) Motion to adopt a Resolution Submitting to the Qualified Voters of the City of Milpitas a Measure Amending Chapter 400 (Mayoral and Councilmanic Term Limits) of Title 1 (Administration) of the Milpitas Municipal Code to Amend Term Limits on Mayoral and City Council Member Service, at a General Municipal Election to be Consolidated with the Statewide General Election to be Held November 8, 2022, and Setting Rules for Arguments and Rebuttals for and Against Said Measure.

Attachment(s):
1. Resolution 9171
2. A Resolution Submitting to the Qualified Voters of the City of Milpitas a Measure Amending Chapter 400 (Mayoral and Councilmanic Term Limits) of Title 1 (Administration) of the Milpitas Municipal Code to Amend Term Limits on Mayoral and City Council Member Service, at a General Municipal Election to be Consolidated with the Statewide General Election to be Held November 8, 2022, and Setting Rules for Arguments and Rebuttals for and Against Said Measure

RESOLUTION NO. 9171

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS, CALIFORNIA, SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF MILPITAS A MEASURE AMENDING CHAPTER 400 (MAYORAL AND COUNCILMANIC TERM LIMITS) OF TITLE 1 (ADMINISTRATION) OF THE MILPITAS MUNICIPAL CODE TO AMEND TERM LIMITS ON MAYORAL AND CITY COUNCIL MEMBER SERVICE, AT A GENERAL MUNICIPAL ELECTION TO BE CONSOLIDATED WITH THE STATEWIDE GENERAL ELECTION TO BE HELD NOVEMBER 8, 2022, AND SETTING RULES FOR ARGUMENTS AND REBUTTALS FOR AND AGAINST SAID MEASURE

WHEREAS, the City of Milpitas is governed by an elected City Council consisting of a separately elected Mayor who currently serves two-year terms and four City Council Members who currently serve four-year terms; and

WHEREAS, the Mayor and City Council Members are generally elected in November of even-numbered years; and

WHEREAS, the Milpitas Municipal Code currently sets the following term limits on Mayoral and City Council service:

- A combined total of three consecutive elective terms serving as either Mayor or as a Councilmember; however

- If a Councilmember is elected Mayor or the Mayor is elected as a Councilmember, the official may serve a combined total of four consecutive elective terms; and

- Once the elected official reaches their respective term limit, he or she must step down from that office for a "cooling off period" of at least two years and may then serve again in elective office; and

WHEREAS, the Milpitas City Council desires to propose an ordinance/measure (the "Measure") which would amend Chapter 400 of Title 1 of the Milpitas Municipal Code in order to amend Mayoral and City Council term limits as follows, effective starting with the November 8, 2022 General Municipal Election:

- A combined total of three consecutive elective terms serving as Mayor, however, if the Mayor is thereafter elected as a Councilmember, the official may serve a combined total of four consecutive elective terms, for a combined total of ten consecutive years (6 years as Mayor and 4 years as a Councilmember; and

- A combined total of ***two*** consecutive elective terms serving as a Councilmember, however, if a Councilmember is thereafter elected as Mayor, the official may serve a combined total of ***three*** consecutive elective terms, for

a combined total of ten consecutive years (8 years as a Councilmember and 2 years as Mayor; and

- Once the elected official reaches their respective term limit, he or she must step down from that office for a "cooling off period" of at least two years and may then serve again; and

WHEREAS, California Government Code section 36502(b) requires a local term limits ordinance/measure to be submitted to and approved by a majority of voters voting at a "regularly scheduled election"; and

WHEREAS, the next "regularly scheduled election" is the General Municipal Election to be held on the same date as the Statewide General Election - November 8, 2022; and

WHEREAS, pursuant to California Elections Code Section 9222, the City Council is authorized to submit the Measure to the voters; and

WHEREAS, California Government Code section 36502(b) also requires a local term limits ordinance/measure to be "prospective"; and

WHEREAS, the Measure is drafted to be "prospective" and will only limit future Mayoral or Council Member terms starting with the November 8, 2022 General Municipal Election; and

WHEREAS, the City Council desires to consolidate the General Municipal Election for the Measure described herein with the Statewide General Election to be held on November 8, 2022; and

WHEREAS, pursuant to California Elections Code sections 9285 and 9286, the City Council further desires to establish rules and regulations for the preparation, submittal and printing of arguments and rebuttals for and against the Measure described herein; and

WHEREAS, the specific terms of the Measure are attached hereto as Exhibit "A" and by this reference made an operative part hereof, and in accordance with all applicable laws.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MILPITAS, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. Recitals. The City Council of the City hereby finds and determines that the foregoing recitals are true and correct, are incorporated herein and by this reference made an operative part hereof.

SECTION 2. Submission of Ballot Measure. The City Council of the City, pursuant to its right and authority as contained in California Elections Code section 9222, California Government Code section 36502(b) and any other laws applicable to general law cities, hereby orders the Measure to be submitted to the qualified voters of the City at the General Municipal election to be held and consolidated with the Statewide General Election on Tuesday, November 8, 2022. The proposed Measure shall be in the form attached hereto as Exhibit "A" to this Resolution and is incorporated by this reference as if fully set forth herein.

SECTION 3. Ballot Question. The City Council, pursuant to its right and authority, does hereby order that the ballot question for the Measure shall be presented and printed upon the ballot submitted to the qualified voters in the manner and form set forth in this Section 3. On the ballot to be submitted to the qualified voters at the General Municipal election to be consolidated with the Statewide General Election on Tuesday, November 8, 2022, in addition to any other matters required by law, there shall be printed substantially the following question:

"Shall an ordinance be adopted amending the Milpitas Municipal Code to establish, effective with the November 8, 2022 General Municipal Election, a two consecutive term limit on City Councilmember service, with a three consecutive term limit where the City Councilmember runs for Mayor, followed by a two-year "cooling off" period, during which a person may not serve as Mayor or a Councilmember?"	**YES**	
	NO	

SECTION 4. Election Procedures.

A. The City Council consents to the consolidation of the election on this Measure with all other elections being held in the same territory on November 8, 2022, and to hold and conduct the consolidated election in the manner prescribed in Election Code Section 10418.

B. The ballots to be used at the election shall be in the form and content as required by law.

C. In accordance with Section 10403 of the Elections Code, the Board of Supervisors of Santa Clara County is hereby requested to consent to consolidation of the election on this Measure with the Statewide General Election and all other elections being held in the same territory on November 8, 2022, and to having the Registrar of Voters render such election services to the City of Milpitas as may be requested by the City Clerk of said City, the County of Santa Clara to be reimbursed in full for such services as are performed.

D. The election services which the City of Milpitas requests the Registrar of

Voters, or such other official as may be appropriate, to perform and which such officer is hereby authorized and directed to perform, if said Board of Supervisors consents, include: the preparation, printing and mailing of sample ballots and guides; the establishment or appointment of precincts, voting centers, and election officers, and making such publications as are required by law in connection therewith; the furnishing of ballots, voting booths and other necessary supplies or materials for voting centers; the canvassing of the returns of the election and the furnishing of the results of such canvassing to the City Clerk of the City of Milpitas; and the performance of such other election services as may be requested by the City Clerk.

E. The City Clerk is authorized, instructed and directed to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

F. That the precincts, ballot drop box locations and hours of operations, vote center locations and hours of operations, vote-by-mail procedures and timing, and election officers, and all other persons and procedures for the General Municipal Election shall be the same as those utilized by the County of Santa Clara; and

G. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections in the City.

H. Notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form, and manner as required by law.

I. All ballots shall be tallied at a central counting place and not at the precincts. Said central counting place shall be at a County center as designated by the Registrar of Voters.

J. The Santa Clara County Registrar of Voters is hereby authorized to canvass the returns of said election.

K. The City Clerk of the City of Milpitas shall receive the canvass as it pertains to the election on the Measure, and shall certify the results to the City Council, as required by law.

SECTION 5. Arguments and Analysis.

A. The City Council authorizes (i) the City Council or any member(s) of the City Council, (ii) any individual voter eligible to vote on the above measure, (iii) a bona fide association of such citizens or (iv) any combination of voters and associations, to file a written argument in favor of or against the City measure, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the

State of California and may change the argument until and including **August 16, 2022** after which no arguments for or against the measure may be submitted to the City Clerk. Arguments in favor of or against the measure shall each not exceed 300 words in length. Each argument shall be filed with the City Clerk, signed, and include the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers who is the author of the argument.

B. The City Clerk shall comply with all provisions of law establishing priority of arguments for printing and distribution to the voters, and shall take all necessary actions to cause the selected arguments to be printed and distributed to the voters.

C. Pursuant to Section 9280 of the Elections Code, the City Council directs the City Clerk to transmit a copy of the measure to the City Attorney. The City Attorney shall prepare an impartial analysis of the measure, not to exceed 500 words in length, showing the effect of the measure on the existing law and the operation of the measure. The City Attorney shall transmit such impartial analysis to the City Clerk, who shall cause the analysis to be published in the ballot pamphlet along with the ballot measure as provided by law. The Impartial Analysis shall be filed by the deadline set for filing of primary arguments as set forth in subsection (A) above. The impartial analysis shall include a statement indicating whether the measure was placed on the ballot by a petition signed by the requisite number of voters of by the City Council. In the event the entire text of the measure is not printed on the ballot, nor in the voter information portion of the sample ballot, there shall be printed immediately below the impartial analysis, in no less than 10-font bold type, the following: **"The above statement is an impartial analysis of Ordinance or Measure ____. If you desire a copy of the ordinance or measure, please call the election official's office at (insert phone number) and a copy will be mailed at no cost to you."**

SECTION 6. Rebuttals.

A. That pursuant to Section 9285 of the Elections Code of the State of California, when the Clerk has selected the arguments for and against the various City initiated measures which will be printed and distributed to the voters, the Clerk shall send copies of the argument in favor of the measures to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. The authors or persons designated by them may prepare and submit rebuttal arguments not exceeding 250 words. The rebuttal arguments shall be filed with the City Clerk not later than **August 23, 2022.** Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.

B. That all previous resolutions providing for the filing of rebuttal arguments for City measures are repealed.

C. That the provisions herein shall apply only to the election to be held on November 8, 2022, and shall then be repealed.

SECTION 7. Placement on the Ballot. The full text of the Measure shall not be printed in the voter pamphlet, and a statement shall be printed in the ballot pursuant to Section 9223 of the Elections Code advising voters that they may obtain a copy of this Measure, at no cost, upon request made to the City Clerk.

SECTION 8. Delivery of Resolution to County. The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original resolutions. The City Council directs the City Clerk to deliver copies of this Resolution, including the Measure attached hereto as Exhibit "A", to the Clerk of the Board of Supervisors of Santa Clara County and to the Registrar of Voters of Santa Clara County.

SECTION 9. CEQA. The City Council hereby finds and determines that the ballot Measure relates to organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment, and therefore is not a project within the meaning of the California Environmental Quality Act ("CEQA") and the State CEQA Guidelines, section 15378(b)(5).

SECTION 10. Severability. If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Resolution which can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The City Council hereby declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion thereof.

SECTION 11. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Milpitas, California, at a regular meeting held on this 7th day of June, 2022.

RICH TRAN
MAYOR

I HEREBY CERTIFY that the foregoing Resolution was duly adopted at a regular meeting of said City Council on the 7th day of June, 2022, by the following vote:

AYES: COUNCIL MEMBERS: (4) Mayor Tran, Vice Mayor Montano, Councilmembers Chua, and Phan

NAYS: COUNCIL MEMBERS: (0) None

ABSENT: COUNCIL MEMBERS: (1) Councilmember Dominguez

ABSTAIN: COUNCIL MEMBERS: (0) None

ATTEST:

Wendy Wood
City Clerk

APPROVED AS TO FORM:

Michael Mutalipassi
City Attorney

EXHIBIT "A"

ORDINANCE NO. ____

AN ORDINANCE OF THE PEOPLE OF THE CITY OF MILPITAS, CALIFORNIA, AMENDING CHAPTER 400 (MAYORAL AND COUNCILMANIC TERM LIMITS) OF TITLE 1 (ADMINISTRATION) OF THE MILPITAS MUNICIPAL CODE TO AMEND TERM LIMITS ON MAYORAL AND CITY COUNCILMEMBER SERVICE

NOW THEREFORE, THE PEOPLE OF THE CITY OF MILPITAS DO ORDAIN AS FOLLOWS:

SECTION 1. Subject to the approval of a majority of the voters of the City of Milpitas at the scheduled election so designated by the City Council in a separate resolution placing the proposal on the ballot for such election, Chapter 400 of Title 1 of the Milpitas Municipal Code is hereby amended to read as follows:

"Chapter 400 – MAYORAL AND COUNCILMANIC TERM LIMITS.

Sections:

~~Section 1 – Term Limits~~

I-400-1 - Term Limits

A. A person may serve a maximum of three consecutive elective terms as ~~either a City Councilmember or as~~ the Mayor. ***However, if the Mayor is elected as a Councilmember, that person may serve one additional consecutive elective term as a Councilmember.***

B. A person may serve a maximum of two consecutive elective terms as a City Councilmember. However, if a Councilmember is elected Mayor ~~or the Mayor is elected Councilmember,~~ that person may serve ***an additional*** ~~a combined total of no more than four~~ consecutive elective term***s as Mayor***. ~~At any municipal election a~~

C. After the expiration of two years following said consecutive elective terms, such former Councilmember or Mayor may again ~~seek~~ ***be*** elect***ed***~~ion~~ ***or appointed*** to ***serve on the*** City Council or as Mayor.

I-400-2 - Applicability to Partial Terms

For purposes of applying this Chapter, a person who serves over half of either a Council***member*** or Mayoral ***elective*** term shall be deemed to have served that entire ***elective*** term ***consecutively with the next scheduled elective term, even if there is an actual break of time in elected service***. In the event one is elected Mayor during

his or her tenure as Councilmember, he or she shall be deemed to have served that entire Council term for purposes of applying this Chapter.

I-400-3 – Definition of "Elective term"

A. "Elective term" shall mean:

(1) A full term of service (four years for Councilmembers and two years for Mayor) for which a person was nominated, including as a write-in candidate, and to which he or she was elected to office at any General Municipal Election, occurring on or after November 8, 2022; or

(2) A full term of service (four years for Council Members and two years for Mayor) to which a person was appointed by the City Council in lieu of a General Municipal Election, pursuant to California Elections Code Section 10229 or similar law, occurring on or after November 8, 2022

B. "Elective Term" shall not mean any partial term to which a person has been specially elected or appointed to the office of Mayor or Councilmember pursuant to a recall election or to fill a mid-term vacancy, pursuant to State law.

C. Special Transitional Rules. Notwithstanding the above, if, as of the November 8, 2022 General Municipal Election:

(1) a person has already served three consecutive elective terms as Mayor to which he or she was elected or appointed in lieu of an election in the Years 2016, 2018 and 2020, that person may not serve any further consecutive terms as Mayor but may serve one consecutive term as a Councilmember staring in the Year 2022. If elected or appointed to the office of Councilmember, that person serve one term as a Councilmember and thereafter may not serve as Mayor or as a Councilmember until the expiration of two years following said consecutive elective terms, as outlined above. Such person may also not resign as a Councilmember and serve as Mayor starting in the Year 2024.

(2) a person has already served two consecutive terms as a Councilmember to which he or she was elected or appointed in lieu of an election in the Years 2016 and 2020, that person may not serve any further consecutive terms as a Councilmember but may serve one consecutive term as Mayor starting in the Year 2022 or 2024. If elected or appointed to the office of Mayor, that person may serve one term as Mayor and thereafter may not serve as Mayor or as a Councilmember until the expiration of two years following said consecutive elective terms, as outlined above.

(3) a person has already served one term as a Councilmember to which he or she was elected or appointed in lieu of an election in the Year 2018, that person may serve one additional consecutive term as a Councilmember

starting in the Year 2022 and may thereafter serve one consecutive term as Mayor starting in the Year 2026. The person thereafter may not serve as Mayor or as a Councilmember until the expiration of two years following said consecutive elective terms, as outlined above.

(4) a person is currently serving a first term as a Councilmember to which he or she was elected in the Year 2020, that person may serve one additional consecutive term as a Councilmember starting in the Year 2024 and may thereafter serve one consecutive term as Mayor starting in the Year 2028. The person thereafter may not serve as Mayor or as a Councilmember until the expiration of two years following said consecutive elective terms, as outlined above.

I-400-4 – Prohibition on Elective Service When Term Limit Reached

A. The City Clerk, or other election official authorized by law, shall not accept or verify the signatures on any nomination paper for any person, including any paper for the purpose of seeking election as a write-in candidate, nor shall he or she certify or place on the list of certified candidates, nor print or cause to be printed on any ballot, voter information guide, sample ballot or ballot label, the name of any person whose candidacy, if successful, will result in a new Mayoral or City Councilmember elective term that exceeds the limits set forth herein.

B. Notwithstanding section I-400-3(B)(3) above, no person whose elected service has reached the applicable term limit set forth herein may be appointed to serve as Mayor or as a Councilmember, whether said appointment is in lieu of a General Municipal Election, pursuant to California Elections Code Section 10229, or to fill a vacancy in the office of Mayor or Councilmember pursuant to State law.

C. Notwithstanding section I-400-3(B)(3) above, no person whose elected service has reached the applicable term limit set forth herein may run for special election to fill a recall or vacancy in the office of Mayor or a Councilmember pursuant to State law.

I-400-~~3~~***5*** - Effective Date

In accordance with Election Code 9217, the Ordinance codified in this Chapter became effective on ~~May 17, 1996~~ ***December _____, 2022***, which was ten days after the City Council declared the result of the Election."

SECTION 2. If any portion of this Ordinance is declared invalid by a court of law or other legal body with applicable authority, the invalidity shall not affect or prohibit the force and effect of any other provision or application of the Ordinance that is not deemed invalid. The voters of the City hereby declare that they would have circulated for qualification and/or voted for the adoption of this Section, and each portion thereof, regardless of the fact that any portion of the initiative may be subsequently deemed invalid.

SECTION 3. To the fullest extent allowed by law, the provisions of this Ordinance shall prevail over, and supersede, all other provisions of the Municipal Code and any ordinances, resolutions or administrative policies of the City of Milpitas which are in conflict with any provision of this Ordinance.

SECTION 4. This Section shall not be repealed or amended except by a measure approved by a majority of the electors voting on the issue at a General Municipal Election, or at a special election called for that purpose.

SECTION 5. This Ordinance shall take effect only if approved by a majority of the eligible voters of the City of Milpitas voting at a Municipal General Election to be held on November 8, 2022, and shall take effect ten (10) days after the City Council has certified the results of the Municipal General Election by resolution.

SECTION 6. The Mayor is hereby authorized to attest to the adoption of this Ordinance by the People voting thereon on November 8, 2022, by signing where indicated below.

I hereby certify that the foregoing Ordinance was PASSED, APPROVED AND ADOPTED by the People of the City of Milpitas on the 8th day of November, 2022.

_____

RICH TRAN
MAYOR

RESOLUTION NO. ___

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS, CALIFORNIA, SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF MILPITAS A MEASURE AMENDING CHAPTER 400 (MAYORAL AND COUNCILMANIC TERM LIMITS) OF TITLE 1 (ADMINISTRATION) OF THE MILPITAS MUNICIPAL CODE TO AMEND TERM LIMITS ON MAYORAL AND CITY COUNCIL MEMBER SERVICE, AT A GENERAL MUNICIPAL ELECTION TO BE CONSOLIDATED WITH THE STATEWIDE GENERAL ELECTION TO BE HELD NOVEMBER 8, 2022, AND SETTING RULES FOR ARGUMENTS AND REBUTTALS FOR AND AGAINST SAID MEASURE

WHEREAS, the City of Milpitas is governed by an elected City Council consisting of a separately elected Mayor who currently serves two-year terms and four City Council Members who currently serve four-year terms; and

WHEREAS, the Mayor and City Council Members are generally elected in November of even-numbered years; and

WHEREAS, the Milpitas Municipal Code currently sets the following term limits on Mayoral and City Council service:

- A combined total of three consecutive elective terms serving as either Mayor or as a Councilmember; however

- If a Councilmember is elected Mayor or the Mayor is elected as a Councilmember, the official may serve a combined total of four consecutive elective terms; and

- Once the elected official reaches their respective term limit, he or she may not serve in that office for a “cooling off period” of at least two years and may then serve again in elective office; and

WHEREAS, the Milpitas City Council desires to propose an ordinance/measure (the “Measure”) which would amend Chapter 400 of Title 1 of the Milpitas Municipal Code in order to amend Mayoral and City Council term limits as follows, effective starting with the November 8, 2022 General Municipal Election:

- A total of ten consecutive years of combined elective service, whether as Mayor or a City Councilmember. If the elected official reaches the ten year term limit, he or she may not serve in any elective office for a “cooling off period” of at least two years and may then serve in elective office again (as Mayor or Councilmember) for a new term limits period; and

- Notwithstanding the above, one may not serve more than a total of six years as Mayor (three elective terms) within the ten consecutive year combined limit. If the Mayor reaches the six year term limit, he or she may (i) run for one elective

term as a Councilmember, provided the Mayor has four years remaining within his or her respective ten consecutive year combined term limit; or (ii) choose not to serve in elective office for a "cooling off period" of at least two years, after which he or she may then serve in elective office again (as Mayor or Councilmember) again for a new term limits period; and

WHEREAS, California Government Code section 36502(b) requires a local term limits ordinance/measure to be submitted to and approved by a majority of voters voting at a "regularly scheduled election"; and

WHEREAS, the next "regularly scheduled election" is the General Municipal Election to be held on the same date as the Statewide General Election - November 8, 2022; and

WHEREAS, pursuant to California Elections Code Section 9222, the City Council is authorized to submit the Measure to the voters; and

WHEREAS, California Government Code section 36502(b) also requires a local term limits ordinance/measure to be "prospective"; and

WHEREAS, the Measure is drafted to be "prospective" and will only limit future Mayoral or Council Member terms starting with the November 8, 2022 General Municipal Election; and

WHEREAS, the City Council desires to consolidate the General Municipal Election for the Measure described herein with the Statewide General Election to be held on November 8, 2022; and

WHEREAS, pursuant to California Elections Code sections 9285 and 9286, the City Council further desires to establish rules and regulations for the preparation, submittal and printing of arguments and rebuttals for and against the Measure described herein; and

WHEREAS, the specific terms of the Measure are attached hereto as Exhibit "A" and by this reference made an operative part hereof, and in accordance with all applicable laws.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MILPITAS, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. Recitals. The City Council of the City hereby finds and determines that the foregoing recitals are true and correct, are incorporated herein and by this reference made an operative part hereof.

SECTION 2. Submission of Ballot Measure. The City Council of the City, pursuant to its right and authority as contained in California Elections Code section 9222, California Government Code section 36502(b) and any other laws applicable to general law cities, hereby orders the Measure to be submitted to the qualified voters of the City at the General Municipal election to be held and consolidated with the Statewide General Election on Tuesday, November 8, 2022. The proposed Measure shall be in the form attached hereto as Exhibit "A" to this Resolution and is incorporated by this reference as if fully set forth herein.

SECTION 3. Ballot Question. The City Council, pursuant to its right and authority, does hereby order that the ballot question for the Measure shall be presented and printed upon the ballot submitted to the qualified voters in the manner and form set forth in this Section 3. On the ballot to be submitted to the qualified voters at the General Municipal election to be consolidated with the Statewide General Election on Tuesday, November 8, 2022, in addition to any other matters required by law, there shall be printed substantially the following question:

"Shall an ordinance be adopted amending the Milpitas Municipal Code to establish, effective with the November 8, 2022 General Municipal Election, a ten consecutive year limit on combined Mayoral and City Councilmember service, with a six year limit on Mayoral service, followed by a two-year "cooling off" period, during which a person may not serve as Mayor or a Councilmember?"	**YES**	
	NO	

SECTION 4. Election Procedures.

A. The City Council consents to the consolidation of the election on this Measure with all other elections being held in the same territory on November 8, 2022, and to hold and conduct the consolidated election in the manner prescribed in Election Code Section 10418.

B. The ballots to be used at the election shall be in the form and content as required by law.

C. In accordance with Section 10403 of the Elections Code, the Board of Supervisors of Santa Clara County is hereby requested to consent to consolidation of the election on this Measure with the Statewide General Election and all other elections being held in the same territory on November 8, 2022, and to having the Registrar of Voters render such election services to the City of Milpitas as may be requested by the City Clerk of said City, the County of Santa Clara to be reimbursed in full for such services as are performed.

D. The election services which the City of Milpitas requests the Registrar of

Voters, or such other official as may be appropriate, to perform and which such officer is hereby authorized and directed to perform, if said Board of Supervisors consents, include: the preparation, printing and mailing of sample ballots and guides; the establishment or appointment of precincts, voting centers, and election officers, and making such publications as are required by law in connection therewith; the furnishing of ballots, voting booths and other necessary supplies or materials for voting centers; the canvassing of the returns of the election and the furnishing of the results of such canvassing to the City Clerk of the City of Milpitas; and the performance of such other election services as may be requested by the City Clerk.

E. The City Clerk is authorized, instructed and directed to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

F. That the precincts, ballot drop box locations and hours of operations, vote center locations and hours of operations, vote-by-mail procedures and timing, and election officers, and all other persons and procedures for the General Municipal Election shall be the same as those utilized by the County of Santa Clara; and

G. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections in the City.

H. Notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form, and manner as required by law.

I. All ballots shall be tallied at a central counting place and not at the precincts. Said central counting place shall be at a County center as designated by the Registrar of Voters.

J. The Santa Clara County Registrar of Voters is hereby authorized to canvass the returns of said election.

K. The City Clerk of the City of Milpitas shall receive the canvass as it pertains to the election on the Measure, and shall certify the results to the City Council, as required by law.

SECTION 5. Arguments and Analysis.

A. The City Council authorizes (i) the City Council or any member(s) of the City Council, (ii) any individual voter eligible to vote on the above measure, (iii) a

bona fide association of such citizens or (iv) any combination of voters and associations, to file a written argument in favor of or against the City measure, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California and may change the argument until and including **August 16, 2022** after which no arguments for or against the measure may be submitted to the City Clerk. Arguments in favor of or against the measure shall each not exceed 300 words in length. Each argument shall be filed with the City Clerk, signed, and include the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers who is the author of the argument.

B. The City Clerk shall comply with all provisions of law establishing priority of arguments for printing and distribution to the voters, and shall take all necessary actions to cause the selected arguments to be printed and distributed to the voters.

C. Pursuant to Section 9280 of the Elections Code, the City Council directs the City Clerk to transmit a copy of the measure to the City Attorney. The City Attorney shall prepare an impartial analysis of the measure, not to exceed 500 words in length, showing the effect of the measure on the existing law and the operation of the measure. The City Attorney shall transmit such impartial analysis to the City Clerk, who shall cause the analysis to be published in the ballot pamphlet along with the ballot measure as provided by law. The Impartial Analysis shall be filed by the deadline set for filing of primary arguments as set forth in subsection (A) above. The impartial analysis shall include a statement indicating whether the measure was placed on the ballot by a petition signed by the requisite number of voters of by the City Council. In the event the entire text of the measure is not printed on the ballot, nor in the voter information portion of the sample ballot, there shall be printed immediately below the impartial analysis, in no less than 10-font bold type, the following: **"The above statement is an impartial analysis of Ordinance or Measure ____. If you desire a copy of the ordinance or measure, please call the election official's office at (insert phone number) and a copy will be mailed at no cost to you."**

SECTION 6. Rebuttals.

A. That pursuant to Section 9285 of the Elections Code of the State of California, when the Clerk has selected the arguments for and against the various City initiated measures which will be printed and distributed to the voters, the Clerk shall send copies of the argument in favor of the measures to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. The authors or persons designated by them may prepare and submit rebuttal arguments not exceeding 250 words. The rebuttal arguments shall be filed with the City Clerk not later than **August 23, 2022.** Rebuttal arguments shall be printed in the same manner as the direct

arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.

B. That all previous resolutions providing for the filing of rebuttal arguments for City measures are repealed.

C. That the provisions herein shall apply only to the election to be held on November 8, 2022, and shall then be repealed.

SECTION 7. Placement on the Ballot. The full text of the Measure shall not be printed in the voter pamphlet, and a statement shall be printed in the ballot pursuant to Section 9223 of the Elections Code advising voters that they may obtain a copy of this Measure, at no cost, upon request made to the City Clerk.

SECTION 8. Delivery of Resolution to County. The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original resolutions. The City Council directs the City Clerk to deliver copies of this Resolution, including the Measure attached hereto as Exhibit "A", to the Clerk of the Board of Supervisors of Santa Clara County and to the Registrar of Voters of Santa Clara County.

SECTION 9. CEQA. The City Council hereby finds and determines that the ballot Measure relates to organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment, and therefore is not a project within the meaning of the California Environmental Quality Act ("CEQA") and the State CEQA Guidelines, section 15378(b)(5).

SECTION 10. Severability. If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Resolution which can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The City Council hereby declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion thereof.

SECTION 11. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Milpitas, California, at a regular meeting held on this _____ day of _____, 2022.

_____
RICH TRAN
MAYOR

I HEREBY CERTIFY that the foregoing Resolution was duly adopted at a regular meeting of said City Council on the _____day of _____, 2022, by the following vote:

AYES: COUNCIL MEMBERS:
NAYS: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

EXHIBIT "A"

ORDINANCE NO. ____

AN ORDINANCE OF THE PEOPLE OF THE CITY OF MILPITAS, CALIFORNIA, AMENDING CHAPTER 400 (MAYORAL AND COUNCILMANIC TERM LIMITS) OF TITLE 1 (ADMINISTRATION) OF THE MILPITAS MUNICIPAL CODE TO AMEND TERM LIMITS ON MAYORAL AND CITY COUNCILMEMBER SERVICE

NOW THEREFORE, THE PEOPLE OF THE CITY OF MILPITAS DO ORDAIN AS FOLLOWS:

SECTION 1. Subject to the approval of a majority of the voters of the City of Milpitas at the scheduled election so designated by the City Council in a separate resolution placing the proposal on the ballot for such election, Chapter 400 of Title 1 of the Milpitas Municipal Code is hereby amended to read as follows:

"**Chapter 400 – MAYORAL AND COUNCILMANIC TERM LIMITS.**

Sections:

~~Section 1 – Term Limits~~

I-400-1 - Term Limits

A. A person may serve a ***combined*** maximum of ~~three~~ ***ten*** consecutive ***years of*** elective terms ***of service*** as either a City Councilmember or as the Mayor.

B. Further, a person may only serve a total of six years (three elective terms) of service as Mayor within the combined maximum ten consecutive year term limit provided in subsection (A). ~~However, if a Councilmember is elected Mayor or the Mayor is elected Councilmember, that person may serve a combined total of no more than four consecutive elective terms.~~

C. ~~At any municipal election after the expiration of two years following said~~ ***Once a person reaches the combined*** consecutive elective term~~s~~ ***limit provided in subsection (A)***, ~~such~~ ***the*** former Councilmember or Mayor may ***not*** again ~~seek~~ ***be*** elect***ed***~~ion~~ ***or appointed*** to ***serve on the*** City Council or as Mayor ***until the expiration of two years following the end of the officer's elective service***.

D. If a person reaches the Mayoral term limit in subsection (B) but has four available years of service remaining under the combined term limit provided in subsection (A), the former Mayor may not again be elected or appointed to serve as Mayor but the former Mayor may serve as a City Councilmember for one elective term (four years) and then may not serve on the City Council or as Mayor until the

expiration of two years following the end of the officer's elective service as provided in subsection (C).

E. If a person reaches the Mayoral term limit in subsection (B) but has only two available years of service remaining under the combined term limit provided in subsection (A), the former Mayor may not again be elected or appointed to serve as either Mayor or as a Councilmember until the expiration of two years following the former Mayor's service. The person may thereafter serve as Mayor or a Councilmember pursuant to subsection (C).

F. If a person serves a combined total of eight consecutive years (two consecutive elective terms) as a Councilmember, the Councilmember may not again be elected or appointed to serve as a Councilmember, but the former Councilmember may serve two consecutive years (one consecutive elective term) as Mayor after which he or she may not serve on the City Council or as Mayor until the expiration of two years following the end of the officer's elective service as provided in subsection (C).

I-400-2 - Applicability to Partial Terms

For purposes of applying this Chapter, a person who serves ~~over~~ ***one*** half ***or more*** of either a Council***member*** or Mayoral ***elective*** term shall be deemed to have served that entire ***elective*** term ***(all years) consecutively with the next scheduled elective term, even if there is an actual break of time in elected service***. In the event one is elected Mayor during his or her tenure as Councilmember, he or she shall be deemed to have served that entire Council term for purposes of applying this Chapter.

I-400-3 – Definition of "Elective term"

A. "Elective term" shall mean:

(1) A full term of service (four years for Councilmembers and two years for Mayor) for which a person was nominated, including as a write-in candidate, and to which he or she was elected to office at any General Municipal Election, occurring on or after November 8, 2022; or

(2) A full term of service (four years for Council Members and two years for Mayor) to which a person was appointed by the City Council in lieu of a General Municipal Election, pursuant to California Elections Code Section 10229 or similar law, occurring on or after November 8, 2022

B. "Elective Term" shall not mean any partial term to which a person has been specially elected or appointed to the office of Mayor or Councilmember pursuant to a recall election or to fill a mid-term vacancy, pursuant to State law.

C. Special Transitional Rules. Notwithstanding the above, if, as of the November 8, 2022 General Municipal Election:

(1) a person has already served six consecutive years (three elective terms) as Mayor to which he or she was elected or appointed in lieu of an election in the Years 2016, 2018 and 2020, that person may not serve any further consecutive terms as Mayor but may serve one consecutive term as a Councilmember staring in the Year 2022. If elected or appointed to the office of Councilmember in the Year 2022, that person may serve one term as a Councilmember and thereafter may not serve as Mayor or as a Councilmember until the expiration of two years following said consecutive terms, as outlined above. Such person may also not resign as a Councilmember and serve as Mayor starting in the Year 2024.

(2) a person serves eight consecutive years as a Councilmember to which he or she was elected or appointed in lieu of an election in the Years 2016 and 2020, that person may not serve any further consecutive terms as a Councilmember but may serve one consecutive term as Mayor starting in the Year 2024. If elected or appointed to the office of Mayor in the Year 2024, that person may serve one term as Mayor and thereafter may not serve as Mayor or as a Councilmember until the expiration of two years following said consecutive elective terms, as outlined above. If a person serves six consecutive years as a Councilmember to which he or she was elected or appointed in lieu of an election in the Years 2016 and 2020, and was elected or appointed as Mayor in lieu of an election in the Year 2022, that person may not serve any further consecutive terms as a Councilmember but may serve the term as Mayor starting in the Year 2022 and may thereafter serve one additional consecutive elected term as Mayor starting in the Year 2024. After said service, that person may not serve as Mayor or as a Councilmember until the expiration of two years following said consecutive elective terms, as outlined above.

(3) a person has already served one term as a Councilmember to which he or she was elected or appointed in lieu of an election in the Year 2018, that person may serve one additional consecutive term as a Councilmember starting in the Year 2022, and may thereafter serve one consecutive term as Mayor starting in the Year 2026. The person thereafter may not serve as Mayor or as a Councilmember until the expiration of two years following said consecutive elective terms, as outlined above. If a person has already served one term as a Councilmember to which he or she was elected or appointed in lieu of an election in the Year 2018, that person may serve one consecutive term as Mayor starting in the Year 2022, and may thereafter serve two more consecutive terms as Mayor starting in the Years 2024 and 2026 or one more consecutive term as a Councilmember starting in the Year 2024. The person thereafter may not serve as Mayor or as a Councilmember until the expiration of two years following said consecutive elective terms, as outlined above.

(4) a person is currently serving a first term as a Councilmember to which he or she was elected in the Year 2020, that person may serve one additional

consecutive term as a Councilmember starting in the Year 2024 and may thereafter serve one consecutive term as Mayor starting in the Year 2028. The person thereafter may not serve as Mayor or as a Councilmember until the expiration of two years following said consecutive elective terms, as outlined above. If a person is currently serving a first term as a Councilmember to which he or she was elected or appointed in lieu of an election in the Year 2020, that person may serve one consecutive term as Mayor starting in the Year 2024, and may thereafter serve two more consecutive terms as Mayor starting in the Years 2026 and 2028 or one more consecutive term as a Councilmember starting in the Year 2026. The person thereafter may not serve as Mayor or as a Councilmember until the expiration of two years following said consecutive elective terms, as outlined above.

I-400-4 – Prohibition on Elective Service When Term Limit Reached

A. The City Clerk, or other election official authorized by law, shall not accept or verify the signatures on any nomination paper for any person, including any paper for the purpose of seeking election as a write-in candidate, nor shall he or she certify or place on the list of certified candidates, nor print or cause to be printed on any ballot, voter information guide, sample ballot or ballot label, the name of any person whose candidacy, if successful, will result in a new Mayoral or City Councilmember elective term that exceeds the limits set forth herein.

B. Notwithstanding section I-400-3(B) above, no person whose elected service has reached the applicable term limit set forth herein may be appointed to serve as Mayor or as a Councilmember, whether said appointment is in lieu of a General Municipal Election, pursuant to California Elections Code Section 10229, or to fill a vacancy in the office of Mayor or Councilmember pursuant to State law.

C. Notwithstanding section I-400-3(B) above, no person whose elected service has reached the applicable term limit set forth herein may run for special election to fill a recall or vacancy in the office of Mayor or a Councilmember pursuant to State law.

I-400-~~3~~***5*** - Effective Date

In accordance with Election Code 9217, the Ordinance codified in this Chapter became effective on ~~May 17, 1996~~ ***December _____, 2022***, which was ten days after the City Council declared the result of the Election."

SECTION 2. If any portion of this Ordinance is declared invalid by a court of law or other legal body with applicable authority, the invalidity shall not affect or prohibit the force and effect of any other provision or application of the Ordinance that is not deemed invalid. The voters of the City hereby declare that they would have circulated for qualification and/or voted for the adoption of this Section, and each portion thereof, regardless of the fact that any portion of the initiative may be subsequently deemed invalid.

SECTION 3. To the fullest extent allowed by law, the provisions of this Ordinance shall prevail over, and supersede, all other provisions of the Municipal Code and any ordinances, resolutions or administrative policies of the City of Milpitas which are in conflict with any provision of this Ordinance.

SECTION 4. This Section shall not be repealed or amended except by a measure approved by a majority of the electors voting on the issue at a General Municipal Election, or at a special election called for that purpose.

SECTION 5. This Ordinance shall take effect only if approved by a majority of the eligible voters of the City of Milpitas voting at a Municipal General Election to be held on November 8, 2022, and shall take effect ten (10) days after the City Council has certified the results of the Municipal General Election by resolution.

SECTION 6. The Mayor is hereby authorized to attest to the adoption of this Ordinance by the People voting thereon on November 8, 2022, by signing where indicated below.

I hereby certify that the foregoing Ordinance was PASSED, APPROVED AND ADOPTED by the People of the City of Milpitas on the 8th day of November, 2022.

_____
RICH TRAN
MAYOR