



REGULAR MEETING OF THE MILPITAS CITY COUNCIL

AGENDA

TUESDAY, SEPTEMBER 20, 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.milpitas.gov/youtube>

Web Streaming: <https://www.milpitas.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_-aQ-liBxSSmDYZEfaHDszw

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 (insert time)

PLEDGE OF ALLEGIANCE

INVOCATION (Councilmember Dominguez)

PRESENTATIONS (7:05 PM)

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@milpitas.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 (7:20 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 City Council Calendars of Meetings for September and October 2022 (Staff Contact: Suzanne Guzzetta, Acting City Clerk, 408-586-3001)

Recommendation: Receive City Council Calendars of Meetings for September and October 2022.

C2. Approve City Council City Council Regular Meeting Minutes of September 6, 2022 (Staff Contact: Suzanne Guzzetta, Acting City Clerk, 408-586-3001)

Recommendation: Approve City Council Regular Meeting minutes of September 6, 2022.

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

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. Adopt a Resolution Updating the Conflict of Interest Code in 2022 and Amending List of Designated Disclosure Positions for the City of Milpitas (Staff Contact: Suzanne Guzzetta, Acting City Clerk, 408-586-3001; and Michael Motalipassi, City Attorney, 408-586-3041)

Recommendation: Adopt a resolution updating the 2022 City of Milpitas Conflict of Interest Code, including the list of designated positions required to annually file the FPPC Form 700 Statement of Economic Interests.

C6. Accept the FY 2021-22 Commissioners Annual Report for Six (6) Commissions and Approve Six (6) City of Milpitas Commission Work Plans for FY 2022-23 (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053; and Walter C. Rossmann, Deputy City Manager, 408-586-3012)

Recommendation: (1) Accept the 2021-22 Commissioners Annual Report; and (2) Approve proposed Fiscal Year 2022-23 Work Plans for (a) Arts Commission, (b) Library and Education Commission, (c) Parks, Recreation and Cultural Resources Commission, (d) Senior Advisory Commission, (e) Veterans Commission, and (f) Youth Advisory Commission.

C7. FY 2021-22 Fourth Quarter Financial Status Report, Fund Balances Thereof and Related Budget Amendments to Close-out the FY 2021-22 Budget (Staff Contact: Lauren Lai, Finance Director, 408-586-3111)

Recommendation: (1) Review the FY 2021-22 Quarterly Financial Status Report for the quarter ending June 30, 2022 (unaudited); and (2) Approve budget, contingency and reporting recommendations.

C8. Authorize the City Manager to Execute a Master Encroachment Agreement for Mobilitie, LLC, a Nevada Limited Liability Company for Installation of Network Facilities Within Public Right-of-Way (Staff Contact: Steve Erickson, Engineering Director/City Engineer, 408-586-3301; and Roberto Alonzo, Principal Civil Engineer, 408-586-3316)

Recommendation: Authorize the City Manager to execute a Master Encroachment Agreement for Mobilitie, LLC, a Nevada Limited Liability Company, for installation of network facilities within the public right-of-way.

C9. Approve and Authorize the City Manager to Execute a Sole Source One-Year Agreement with CentralSquare Inc. for Maintenance and Support of the Public Safety Computer Aided Dispatch System for the Not-to-Exceed Amount of \$129,264.92 (Staff Contact: Daniel Nam, Information Technology Director, 408-586-2712)

Recommendation: Approve and authorize the City Manager to execute a sole source one-year agreement with CentralSquare Inc. for maintenance and support of the Public Safety Computer Aided Dispatch System for the not-to-exceed amount of \$129,264.92, pending final approval by City Attorney.

C10. Authorize and Approve Travel to Anaheim, CA for City Manager Steve McHarris to Attend the Annual Conference of the American Planning Association – California Chapter – to be held October 1 – 4, 2022. (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053)

Recommendation: Authorize and approve travel to Anaheim, CA for City Manager Steve McHarris to attend the Annual Conference of the American Planning Association – California Chapter – to be held October 1 – 4, 2022, for an estimated not-to-exceed amount of \$2,500 budgeted under Conferences/Trainings allocation for the City Manager's Office.

- C11. Adopt a Resolution Authorizing the City Manager to Execute the Extension of the Sole Source Services Agreement with Flock Group Inc. for Automated License Plate Reader (ALPR) Cameras in an Amount Not-to-Exceed \$314,750.00 and Renew the Agreement for One Three-Year Period Subject to Annual Appropriation of Funds. (Staff Contact: Jared Hernandez, Chief of Police, 408-586-2406)**

Recommendation: Adopt a resolution authorizing the City Manager to execute the extension of the sole source services agreement with Flock Group, Inc. for Automated License Plate Reader (ALPR) Cameras in an amount not-to-exceed \$314,750 and renew the agreement for one three-year period subject to annual appropriation of funds; and authorize the Chief of Police to execute contract change orders in an aggregate amount not to exceed \$78,500.00.

- C12. Award IFB 23-009 and Authorize the City Manager to Execute the Purchase Order with Iteris Inc. for the Purchase of Thirty Iteris Traffic Cameras for the Not-to-Exceed Amount of \$125,606.25 (Staff Contact: Roger Lee, Interim Public Works Director, 408-586-2602; and Chris Schroeder, Purchasing Agent, 408-586-3161)**

Recommendation: Award IFB 23-009 and authorize the City Manager to execute the purchase order with Iteris Inc. for the purchase of thirty Iteris traffic cameras for the not-to-exceed amount of \$125,606.25.

- C13. Approve and Authorize the City Manager to Execute the Five-Year General Services Agreement with Aramark Uniform Service for Citywide Uniform, Mat, and Linen Services for the not-to-exceed amount of \$240,916.30 (Staff Contact: Chris Schroeder, Purchasing Agent, 408-586-3161)**

Recommendation: Approve and authorize the City Manager to execute the five-year General Services Agreement with Aramark Uniform Service for Citywide Uniform, Mat, and Linen Services for the not-to-exceed amount of \$240,916.30.

- C14. Consider Sunnyhills Neighborhood Association Fee Waiver Request (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409)**

Recommendation: Approve a fee waiver of \$1,317.00 for the Sunnyhills Neighborhood Association Halloween Event scheduled for October 29, 2022.

- C15. Consider Korean Language and Culture Foundation's Annual Korean Alphabet Event Donation Request (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409)**

Recommendation: Approve a donation of \$500.00 for the Korean Language and Culture Foundation's annual Korean Alphabet Event scheduled for October 2, 2022.

- C16. Consider the Recommendations from Mayor Tran for Appointments to City Commissions (Contact: Mayor Tran, 408- 586-3029)**

Recommendation: Receive the recommendation from Mayor Tran and approve appointments to the Energy and Environmental Sustainability Commission and Youth Advisory Commission.

- C17. Accept Commissioner Resignations (Staff Contact: Suzanne Guzzetta, Acting City Clerk, 408-586-3001)**

Recommendation: Accept the resignation of Khloe Cruz from the Youth Advisory Commission and Dana Arbaugh from the Library and Education Advisory Commission; and direct the Acting City Clerk to post the notice of unscheduled vacancy.

- C18.** Second Reading of Ordinance No. 228.1 of the City Council of the City of Milpitas Adding Chapter 9 (“Use Of Rights-Of-Way And Public Property”) to Title X (“Streets And Sidewalks”) of the Milpitas Municipal Code and Adding Section X-10-1.03 to Chapter 10 (“Structures Or Objects On Sidewalks Or Public Ways”) to Title X (“Streets And Sidewalks”) of the Milpitas Municipal Code (Staff Contact: Michael Mutalipassi, City Attorney, 408-586-3041)

Recommendation: Move to waive second reading and adopt Ordinance No. 228.1 of the City Council of the City of Milpitas adding Chapter 9 (“Use Of Rights-of-way and Public Property”) to Title X (“Streets and Sidewalks”) of the Milpitas Municipal Code and adding Section X-10-1.03 to Chapter 10 (“Structures or Objects on Sidewalks or Public Ways”) to Title X (“Streets and Sidewalks”) of the Milpitas Municipal Code.

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.

- 19.** Conduct a Public Hearing and Introduce Ordinance No. 38.846 Amending Sections of Chapter 10, Title XI of the Milpitas Municipal Code Relating to Non-Residential Building Heights (Staff Contact: Ned Thomas, Planning Director, 408-586-3273)

Recommendation: (1) Conduct a public hearing and move to close the hearing following comments; (2) City Attorney shall read aloud title of the Ordinance; and (3) Move to waive the first reading beyond the title and introduce an Ordinance amending sections of Chapter 10 of Title XI of the Milpitas Municipal Code relating to Non-Residential Building Heights and determine that the Municipal Code amendment 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).

- 20.** Conduct a Public Hearing and Approve the Draft FY 2021-2022 Community Development Block Grant’s (CDBG) Consolidated Annual Performance and Evaluation Report (CAPER) (Staff Contact: Alex Andrade, Economic Development Director, 408-586-3046; and Robert Musallam, Housing and Neighborhood Services Administrator, 408-586-3275)

Recommendation: (1) Open the public hearing, hear testimony, then move to close the public hearing; (2) Approve the draft FY 2021-2022 Community Development Block Grant’s (CDBG) Consolidated Annual Performance and Evaluation Report (CAPER); and (3) Authorize the City Manager, or designee, to make any necessary changes and to submit the approved draft FY 2021-2022 CAPER to the U.S. Department of Housing and Urban Development (HUD) to comply with CDBG requirements.

COMMUNITY DEVELOPMENT (8:30 PM)

- 21.** 6th Cycle Draft Housing Element (2023-2031) (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053; and Alex Andrade, Economic Development Director, 408-586-3046)

Recommendation: (1) Receive a presentation on the Draft Housing Element; (2) receive public comments; and (3) provide comments to be reflected in a revised Draft Housing Element to be submitted to the California Department of Housing and Community Development (HCD) for its review.

LEADERSHIP AND SUPPORT SERVICES (9:45 PM)

- 22.** Discussion of State Funding Plan for Bike Lanes Facilities Enhancement and Homelessness Prevention and Unhoused Services (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053; and Walter C. Rossmann, Deputy City Manager, 408-586-3012)

Recommendation: Receive presentation and provide feedback on the approved \$2.5 Million in State Funding for Bike Lane Facilities Enhancement and Homelessness Prevention and Unhoused Services.

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.milpitas.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.milpitas.gov/government/council/agenda_minutes.asp (select meeting date)

APPLY TO SERVE ON A CITY COMMISSION

Commission application forms are available online at www.milpitas.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.

August 2022						
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October 2022						
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MILPITAS CITY COUNCIL CALENDAR

September 2022

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1 5:30 PM -Santa Clara VTA Board of Directors (CM) 5:30 PM -Milpitas Chamber of Commerce Board (EC)	2	3
4	5 CITY HOLIDAY City Hall Closed 	6 7:00 PM -City Council	7 League of CA Cities Annual Conference and Expo, Long Beach CA: City Manager McHarris	8	9	10
			2:00 PM -Santa Clara VTA Monthly Briefing - Northeast Group (CM) 7:00 PM -Community Advisory Commission (EC)	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) 7:00 PM -Youth Advisory Commission (EC)	7:00 PM -Lantern Festival (Civic Center Plaza)	
11	12 4:30 PM -Economic Development and Trade Commission (KD) 7:00 PM -Parks, Recreation & Cultural Resources Commission (CM)	13 4:00 PM -Milpitas HOPE Suicide Prevention Task Force 5:00 PM Odor Reduction Ad Hoc Subcommittee (RT/CM) 6:00 PM -Community Workshop #3 for the Draft Housing Element (virtual)	14 7:00 PM -Planning Commission 7:00 PM -Silicon Valley Clean Energy Board of Directors (EC)	15 9:00 AM -Milpitas SMART Kick-Off Event (Milpitas City Hall Parking Lot) 10:00 AM -VTA Congestion Mgmt Prog Plng Comm. (CM) 5:30 PM -Measure F Oversight Committee 6:30 PM -Bay Area Water Supply Conserv Agency (CM) 7:00 PM -Public Safety and Emergency Preparedness Commission (KD)	16 9:00 AM -Special VTA Board Workshop (CM) *4:30 PM -City Council Finance Subcommittee (RT/CM) 6:00 PM -In-Person: Mexican Independence Day Flag Raising (Cesar Chavez Plaza)	17
18	19 7:00 PM -Library and Education Commission (Milpitas Library) (EC)	20 7:00 PM -City Council	21 6:00 PM -Energy and Environmental Sustainability Commission (EC)	22 4:00 PM -Silicon Valley Regional Interoperability Authority (SVRIA) (KD)	23 4:00 PM -City/School Collaborative Subcommittee-City Hosting (RT/CM)	24
25	26 7:00 PM -Arts Commission (RT)	27	28 7:00 PM -Planning Commission	29	30	

**Finance Subcommittee will meet only as needed*

September 2022						
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November 2022						
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MILPITAS CITY COUNCIL CALENDAR

October 2022

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1 10:00 AM -Filipino American history Month Flag Raising (Cesar Chavez Plaza)
2	3 7:00 PM -Parks, Recreation & Cultural Resources Commission (CM)	4 7:00 PM -City Council	5 2:00 PM -Santa Clara VTA Monthly Briefing - Northeast Group (CM) 5:30 PM -Veterans Commission (RT) 7:00 PM -Community Advisory Commission (EC)	6 5:30 PM -Milpitas Chamber of Commerce Board (EC) 5:30 PM -Santa Clara VTA Board of Directors (CM)	7	8
9	10 4:30 PM -Economic Development and Trade Commission (KD)	11 4:00 PM -Milpitas HOPE Suicide Prevention Task Force	12 4:00 PM -Transportation Subcommittee (RT/CM) 7:00 PM -Silicon Valley Clean Energy Board of Directors (EC) (Cupertino) 7:00 PM -Planning Commission	13 4:00 PM -Treatment Plant Advisory Committee (CM) 4:00 PM -Santa Clara VTA Policy Advisory Committee (AP) 7:00 PM -Youth Advisory Commission (EC) 7:00 PM -Cities Assoc of SCC (CM)	14 4:00PM -Art Walk @ Murphy Park *4:30 PM -City Council Finance Subcommittee (RT/CM)	15
16	17 7:00 PM -Science, Technology, and Innovation Commission (RT)	18 7:00 PM -City Council	19 6:00 PM -Energy and Environmental Sustainability Commission (EC)	20 10:00 AM -VTA Congestion Mgmt Prog. Planning (CM) 10:00 AM -Quarterly South Bay Odor Stakeholders Group Meeting (RT)	21	22 10:00 AM -Pumpkins in the Park @ Cardoza Park
23	24	25 1:30 PM -Senior Advisory Commission (EC) 5:30 PM -Special Council Meeting (tent)	26 5:00 PM -Alviso Adobe Ribbon Cutting Ceremony 5:30 PM -Cities Assoc. of SCC - Recycling and Waste Reduction Commission (AP) 7:00 PM -Planning Commission	27 12:00 PM -SCC Library JPA Board of Directors Mtg (EC)	28 4:00 PM -City/School Collaborative Subcommittee – MUSD Hosting (RT/CM)	29 3:00 PM -El dia de los Muertos event
30	31 					

**Finance Subcommittee will meet only as needed*



REGULAR MEETING OF THE MILPITAS CITY COUNCIL

MINUTES

TUESDAY, SEPTEMBER 6, 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 21, 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 Acting City Clerk

Mayor Tran called the regular City Council meeting to order at 7:00 PM. Roll call was taken by Acting City Clerk Guzzetta.

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.

INVOCATION

Councilmember Dominguez led a moment of silence for community members lost to COVID-19.

PRESENTATIONS

Mayor Tran presented proclamations recognizing National Pain Awareness Month, National Suicide Prevention Week, National Preparedness Month, National Cleanup Day, and National Gymnastics Day.

The Mayor and Council accepted a check presented by Assembly Member Alex Lee for Homelessness Prevention and Unhoused Services and Bike Lanes Facilities Enhancement Funding.

PUBLIC FORUM

The following people spoke under Public Forum:

1. Allysson McDonald
2. Voltaire Montemayor
3. Tom Valore

ANNOUNCEMENTS AND FUTURE AGENDA ITEMS

City Manager McHarris announced the 3rd Virtual Community Workshop on the Housing Element to be conducted on September 13, 2022 and announced the launch of Milpitas SMART as a 12-month pilot program jointly funded with a grant from Valley Transportation Agency.

Councilmember Dominguez made the following requests:

1. Requested an agenda item for the next City Council meeting to approve a Waiver for the Halloween Event sponsored by Sunnyhills Neighborhood Association. Mayor Tran noted that the non-profit should contact the City Manager.
2. Asked for a conversation on possible partnerships between the City and Milpitas Unified School District to discuss housing affordability issues for educators. Mayor Tran indicated the City-School Collaborative Subcommittee recently discussed this item and passed a resolution in support. Councilmember Dominguez asked for the subcommittee liaison to provide minutes of that meeting to the City Council.

Councilmember Phan expressed thanks to Assembly Member Lee for the work completed by the State Legislature in this session, highlighting AB 2949 to provide toll exemptions for veterans, and AB 2164 to provide funding for ADA compliance for small businesses. He announced that Assembly Member Lee would be hosting an event at Taqueria Las Vegas on September 7, 2022 for Latino Heritage Honorees.

Councilmember Chua commended the increased number of ADUs completed in Milpitas this year. She requested City Manager McHarris to schedule another ADU workshop, and announced that on Saturday, September 10, 2022, from 9 a.m. to noon, there will be a celebration for the opening of the Senior Center on Saturdays.

Vice Mayor Montano expressed additional support for ADUs and announced that the City of Milpitas will host the first Mexican Independence Flag raising ceremony to be held in Milpitas on September 16, 2022.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

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 September 6, 2022 Regular 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

CONSENT CALENDAR

Motion: to approve the consent calendar removing Items 12 and 13 from the consent calendar to be heard after Item 19.

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 City Council Calendar of Meetings for September 2022 (Staff Contact: Suzanne Guzzetta, Acting City Clerk, 408-586-3001)

Received City Council Calendars of Meetings for September 2022.

- C2. Approve City Council City Council Regular Meeting minutes of August 16, 2022 (Staff Contact: Suzanne Guzzetta, Acting City Clerk, 408-586-3001)**

Approved City Council Regular Meeting minutes of August 16, 2022.

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

Reviewed 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. 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)**

Moved 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.

- C6. Review and Accept the 2022 Legislative Season Action Report and Direct Staff to Issue a Request for Proposals for Federal and State Legislative Advocacy Services (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053, and Walter C. Rossmann, Deputy City Manager, 408-586-3012)**

Reviewed and accepted the Quarterly Legislative Season Action Report and directed staff to issue a request for proposals for Federal and State Legislative Advocacy Services.

- C7. Consider the Recommendations from Mayor Tran for Appointments to the Youth Advisory Commission (Contact: Mayor Tran, 408- 586-3029)**

Received the recommendation from Mayor Tran and approve appointments to the Youth Advisory Commission.

- C8. Confirm Appointment of Milpitas Unified School District Representative to the Energy and Environmental Sustainability Commission (Contact: Suzanne Guzzetta, Acting City Clerk, 408-586-3001)**

Confirmed appointment of Milpitas Unified School District representative Jared Acosta to the Energy and Environmental Sustainability Commission to an unexpired term ending October 2023.

- C9. Approve the 2022 Youth Advisory Commission Scholarship Recipients (Staff Contact: Renee Lorentzen, Director of Recreation and Community Services, 408-586-3409)**

Approved budget appropriation of \$1,500.00 to the Recreation and Community Services Department operating budget for three individual \$500.00 Youth Advisory Commission Community Service Scholarships.

- C10. Adopt a Resolution Approving a Site Development Permit to Develop a New Two-story, Single-family Residence on a Vacant 4.67-acre Lot Located in the R1-H Single-family Residential**

Zoning District with a Hillside Combining District at 489 Vista Ridge Drive (Staff Contact: Ned Thomas, Planning Director, 408-586-3273)

Adopted **Resolution No. 9189** approving Site Development Permit SD21-0011, subject to the attached Conditions of Approval, for a new two-story, single-family residence on a vacant 4.67-acre lot located in the R1-H single-family residential zoning district with a hillside combining district at 489 Vista Ridge Drive and making findings of CEQA Exemption.

- C11. Approve Change Order No. 1 to the Contract with Trofholz Technologies for the Installation of Card Access Control and Monitoring Systems at Fire Stations in the Amount of \$39,162.70, Increasing the Total Project Not to Exceed Amount from \$104,324.42 to \$143,487.12 (Staff Contact: Roger Lee, Interim Public Works Director, 408-586-2602 and Chris Schroeder, Purchasing Agent, 408-586-3161)**

(1) Approved Change Order No. 1 to the contract with Trofholz Technologies for the installation of card access control and monitoring systems at Fire Stations in the amount of \$39,162.70, increasing the total project amount not to exceed from \$104,324.42 to \$143,487.12; and (2) Authorized the City Manager to execute one or more additional change orders related to the project to increase the maximum compensation amount to not to exceed \$158,487.12.

- C12. Approve and Authorize the City Manager to Execute the Five-Year General Services Agreement with Aramark Uniform Service for Citywide Uniform, Mat, and Linen Services for the not-to-exceed amount of \$240,916.30 (Staff Contact: Chris Schroeder, Purchasing Agent, 408-586-3161)**

Item removed from Consent.

- C13. Approve and Authorize the City Manager to Execute Amendment No. 2 to the Professional Services Agreement with WeHOPE for Mobile Shower, Laundry, and Case Management Services through January 15, 2023 for a Total Contract Amount of Not to Exceed \$86,552.00 (Staff Contact: Alex Andrade, Director of Economic Development, 408-586-3046, and Robert Musallam, Housing and Neighborhood Services Administrator, 408-586-3275)**

Item removed from Consent.

- C14. Authorize and Approve Out-of-State Travel to Columbus, OH for City Manager Steve McHarris to Attend the Annual Conference of the International City/County Management Association to be held September 17 – 21, 2022. (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053)**

Authorized and approved out-of-state travel to Columbus, OH for City Manager Steve McHarris to attend the Annual Conference of the International City/County Management Association (ICMA) to be held September 17 – 21, 2022, for an estimated not-to-exceed amount of \$3,500.00 under the approved budget for Conferences/Trainings allocation for the City Manager's Office.

COMMUNITY SERVICES AND SUSTAINABLE INFRASTRUCTURE

- 15. Review the Proposed Youth Sports Scholarship Program City Council Policy and Provide Feedback to Staff (Staff Contact: Renee Lorentzen, Director of Recreation and Community Services, 408-586-3409)**

Deputy City Manager Rossmann presented the report.

Councilmember Chua requested additional scholarship allocations for: 1) Scholastic Improvement, 2) Community Service, and 3) NJROTC.

Mayor Tran voiced support for an NJROTC scholarship and asked to bring forward initiating the process to transfer the Mayor's budget allocation for training/travel to support scholarships, and requested the process be brought back as an item for City Council consideration. City Manager McHarris said it could not be considered at this time but could be brought back at a later date.

There were the following speakers

1. Voltaire Montemayor

Mayor Tran concluded that he preferred not to wait until the Mid-Year Budget process and asked to direct staff to return to Council with a request to transfer the Mayor's travel budget to an NJROTC scholarship. City Manager McHarris noted that City Council would need to agree to the transfer and cautioned that the budget for travel and training also encompasses the term of the incoming mayor to be elected. The Mayor asked to include consideration of transferring the Mayor's travel/training budget allocation to an NJROTC scholarship when the policy returns to City Council in October.

LEADERSHIP AND SUPPORT SERVICES

16. Appoint Members to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Community Task Force (Staff Contact: Walter Rossmann, Deputy City Manager, 408-586-3012)

Deputy City Manager Rossmann presented the report.

The following members of the public spoke:

1. Voltaire Montemayor

Councilmember Phan asked the Council to appoint Councilmember Dominguez to the Task Force.

Motion: to approve the appointment of Giuliana Brahim, Dr. Swatisikta, Zakia Afrin, and Vicky Ly as Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Community Task Force members; and appoint Councilmember Dominguez as Council Liaison to the CEDAW Community Task Force.

Motion/Second: Councilmember Phan / Mayor Tran

Motion carried by the following:

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

NOES: None

17. Introduce an Ordinance of the City Council of the City Of Milpitas Adding Chapter 9 ("Use of Rights-of-Way and Public Property") to Title X ("Streets and Sidewalks") of the Milpitas Municipal Code and Adding Section X-10-1.03 to Chapter 10 ("Structures or Objects on Sidewalks or Public Ways") to Title X ("Streets and Sidewalks") of the Milpitas Municipal Code (Staff Contact: Michael Mutalipassi, City Attorney, 408-586-3041)

City Attorney Mutalipassi presented the report.

The following spoke during public comment:

1. Allysson McDonald
2. Tom Valore
3. Voltaire Montemayor

Councilmember Phan voiced dissent for the item until shelter services and plans are in place and housing available.

Councilmember Dominguez expressed concerns relating to enforcement and opted to abstain from the vote.

After discussion, motion: to waive reading of **Ordinance No. 228.1** and introduce an Ordinance of the City Council of the City of Milpitas Adding Chapter 9 (“Use Of Rights-of-way and Public Property”) to Title X (“Streets and Sidewalks”) of the Milpitas Municipal Code and adding Section X-10-1.03 to Chapter 10 (“Structures or Objects on Sidewalks or Public Ways”) to Title X (“Streets and Sidewalks”) of the Milpitas Municipal Code

Motion/Second: Mayor Tran / Councilmember Chua

Motion carried by the following:

AYES: Councilmembers Chua, Vice Mayor Montano, Mayor Tran

NOES: Phan

ABSTAIN: Dominguez

18. Review the List of Agenda Item Requests From Individual Councilmembers and Provide Direction to Staff, Through the Prioritization Process, on Groups 1 Items; Provide Additional Clarification to Staff, If Any, on Group 2 Items and Direct staff to return with a draft City Council Policy titled “City Council Request Prioritization Policy” formalizing the process (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053; Walter C. Rossmann, Deputy City Manager, 408-586-3012)

Assistant City Manager Kantak presented the report.

The following spoke during public comment:

1. Voltaire Montemayor
2. Barbara Navarro

Council reviewed the list of agenda item requests from individual Councilmembers, and individually voted electronically for four items in group one to advance as a priority.

Acting City Clerk Guzzetta read the result of the vote with the following items receiving a majority of votes and moving forward:

- CC 2 Explore an ordinance or policy to reduce thefts and increase security in the commercial retail parking areas
- CC 3 Explore the policy for locking mechanisms on shopping carts for large commercial businesses
- CC 6 Prepare Vision Zero Action Plan
- CC 7 Establish a fund for real estate acquisitions
- CC 8 Memorial Plaque in honor of youth skateboarder that passed away

19. Consider Nomination of a Member of the City Council to the Santa Clara County Unhoused Task Force for Appointment by the Santa Clara County Board of Supervisors (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053)

Assistant City Manager Kantak presented the report.

There was no public comment.

Motion: to confirm Councilmember Chua as the Member of the Milpitas City Council appointed to the Santa Clara County Unhoused Task Force and confirm the nomination for appointment by the Santa Clara County Board of Supervisors.

Motion/Second: Mayor Tran / Councilmember Phan

Motion carried by the following:

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

NOES: None

ITEMS REMOVED FROM CONSENT CALENDAR

- C12. Approve and Authorize the City Manager to Execute the Five-Year General Services Agreement with Aramark Uniform Service for Citywide Uniform, Mat, and Linen Services for the not-to-exceed amount of \$240,916.30 (Staff Contact: Chris Schroeder, Purchasing Agent, 408-586-3161)**

Finance Director Lai and Purchasing Agent Schroeder responded to questions from City Council.

Vice Mayor Montano emphasized the importance of using environmentally sustainable products and suggested bringing a resolution forward for the City to use only biodegradable products.

Motion: to postpone until next regular City Council meeting on September 20, 2022.

Motion/Second: Vice Mayor Montano / Mayor Tran

Motion carried by the following:

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

NOES: None

- C13. Approve and Authorize the City Manager to Execute Amendment No. 2 to the Professional Services Agreement with WeHOPE for Mobile Shower, Laundry, and Case Management Services through January 15, 2023 for a Total Contract Amount of Not to Exceed \$86,552.00 (Staff Contact: Alex Andrade, Director of Economic Development, 408-586-3046, and Robert Musallam, Housing and Neighborhood Services Administrator, 4089-586-3275)**

Staff was available to respond to questions from Council.

There was no public comment.

Motion: to approve and authorize the City Manager to execute Amendment No. 2 to the Professional Services Agreement with WeHOPE for Mobile Shower, Laundry, and Case Management Services through January 15, 2023, in the amount of \$15,000.00, for a total not to exceed contract amount of \$86,552.00.

Motion/Second: Councilmember Phan / Councilmember Dominguez

Motion carried by the following:

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

NOES: None

ADJOURNMENT

Mayor Tran adjourned the meeting at 10:13 PM.

Draft meeting minutes submitted by Acting City Clerk, Suzanne Guzzetta

TENTATIVE CITY COUNCIL AGENDA ITEM LIST

Item # C3.

as of 09/14/2022

October 4, 2022 – 1st Tuesday

CLOSED SESSION

INVOCATION (assigned to Councilmember Chua)

PRESENTATION

- Fire Prevention Week (Proclamation)
- Indigenous Peoples' Day (Proclamation)
- Hindu American Awareness and Appreciation Month (Proclamation)

CONSENT CALENDAR

1. Receive City Council calendar for October 2022 (City Clerk)
2. Approve City Council Meeting minutes of September 20, 2022 (City Clerk)
3. Preview list of items for October 18, 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)
6. 2nd Reading of Zoning Ordinance Amendment related to Maximum Building Heights (Ned Thomas)
7. Real Estate Broker Agreement (Alex Andrade)
8. Bi-Annual Concrete Sidewalk Replacement award of contract (Roger Lee)
9. REAP Grant (Alex Andrade)

PUBLIC HEARING

COMMUNITY DEVELOPMENT

COMMUNITY SERVICES

PUBLIC SAFETY

10. Crossing Guard Alternative Service Delivery Model (Jared Hernandez)

LEADERSHIP

11. ARPA Quarterly Update (Lauren Lai)

REPORTS

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

Item # C4.

Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
1	Schedule an additional ADU workshop	Chua	9/6/2022	
2	Waiver for the Halloween Event sponsored by Sunnyhills Neighborhood Association	Dominguez	9/6/2022	Scheduled to be heard at 9/20/22 City Council meeting
3	City Attorney investigate moving the City Clerk's office into a direct report to the City Council.	Chua	8/16/2022	The City Attorney issued a memorandum to the City Council on August 30, 2022.
4	City Manager or Deputy City Manager to look into underutilized areas of parks or a portion of parks not being used and develop for use in the future.	Chua	8/16/2022	Item will be brought forward as part of the next City Council additional workplan items prioritization in December/January
5	Discuss converting vacant lot that was a basketball court into a community garden at Vasona and Adobe	Montano	8/16/2022	Item will be brought forward as part of the next City Council additional workplan items prioritization in December/January
6	City Manager look into implementing a workshop for small businesses on the bidding process for projects in the city	Chua	8/9/2022	Item will be brought forward as part of the next City Council additional workplan items prioritization in December/January
7	Memory bench at Sunny Hills Park for one of the founders, Dave Vohlberg, and to explore other historical plaques or benches to remember our history	Tran	8/9/2022	Item will be brought forward as part of the next City Council additional workplan items prioritization in December/January
8	Review of the Milpitas Chamber of Commerce previously approved request for funding including a financial report dating back 12 months and the workplan for the Art & Wine Festival	Tran	8/9/2022	Staff is working with the Chamber to obtain the requested documentation
9	City Staff apply for the "Better Cities for Pets" Certification	Tran	6/21/2022	This item did not move forward as part of the next City Council additional workplan items prioritization in August/September
10	Quarterly or Monthly crime statistics on Homekey Project	Chua	6/7/2022	PD will present quarterly reports starting in November 2022.
11	Funding to hire a consultant for the Sunnyhills Historical Designation on a state level	Tran	6/7/2022	Request will be included with the Historic Resources Master Plan project approved as part of the 2023-2027 Capital Improvement Program.
12	Local Boy Scouts Fee Waiver for Eagle Scout Ceremony	Tran	6/7/2022	Through the sponsorship of the Milpitas Rotary Club the Boy Scouts received the resident rental rates; however, the Rotary Club did not sponsor the Boy Scouts for a fee waiver request.
13	Requested the City create a youth scholarship fund for under privileged kids to play sports	Montano	5/17/2022	As part of the adoption of the FY 2022-23 Budget, the City Council allocated \$20,000 for this program. Staff presented a draft Council Policy for this program on September 6, 2022 and will return with an updated Policy based on Council discussion in October 2022.
14	Explore the use of roundabouts as a traffic calming mechanism	Dominguez	4/19/2022	This item did not move forward as part of the next City Council additional workplan items prioritization in August/September

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

Item # C4.

Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
15	Consider policies to regulate automated equipment that would replace a position typically filled by an employee.	Phan	4/19/2022	This item did not move forward as part of the next City Council additional workplan items prioritization in August/September
16	Request for Crossing Guards at McCandless and Montague Expressway and review wages for Crossing Guards	Montano	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.
17	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	11/2/2021	This item was postponed by Mayor Tran due to the Omicron variant and a rise in COVID-19 cases

ACTIVE ITEMS				
Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
18	Establish a SPAR fund modelled after the City of Mountain View - sets asides moneys for opportunities to buy real estate	Montano	6/7/2022	Discussed at Spring Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward during Summer Quarterly City Council Workplan Items Prioritization Discussion on 9/06/2022
19	Memorial Plaque in honor of youth skateboarder that passed away	Montano	6/7/2022	Discussed at Spring Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward during Summer Quarterly City Council Workplan Items Prioritization Discussion on 9/06/2022
20	Prepare Vision Zero Action Plan	Tran	6/7/2022	Discussed at Spring Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward during Summer Quarterly City Council Workplan Items Prioritization Discussion on 9/06/2022
21	Explore the policy for locking mechanisms on shopping carts for large commercial businesses	Tran	4/19/2022	Discussed at Spring Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward during Summer Quarterly City Council Workplan Items Prioritization Discussion on 9/06/2022
22	Explore an ordinance or policy to reduce thefts and increase security in the commercial retail parking areas	Chua	4/5/2022	Discussed at Spring Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward during Summer Quarterly City Council Workplan Items Prioritization Discussion on 9/06/2022
23	Create a plan for future solar paneling at City facilities	Montano	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

NOTE: Deferred and Completed Items are not listed

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

Item # C4.

Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
24	Requested the City Attorney's office explore encampment ordinances from 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	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. The first reading of the ordinance was approved at the Sept. 6, 2022 City Council meeting.
25	Evaluate reopening the childcare center with a non-profit organization running the center	Montano	2/1/2022	Approved during Spring Quarterly City Council Workplan Items Prioritization Discussion on 5/03/2022.
26	Requested an appropriation in an amount not to exceed \$250,000 to procure a contract to address the streetlights that are pending fieldwork.	Tran	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.
27	Explore a lease for the vacant land adjacent to the Library for City use	Tran	1/18/2022	Discussed at Spring Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward at the 5/03/2022 meeting;
28	Staff to look into mural Art on Great Mall Parkway on the VTA owned Light rail pillars	Montano	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 site
29	Request for the City to make the temporary third-party food deliver fee caps permanent and add additional provisions for enforcement	Phan	11/16/2021	Discussed at Spring Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward at the 5/03/2022 meeting
30	Have a picture of Albert Vogel Sr. put up in the Senior Center	Montano	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.
31	Requested the City extend the outdoor dining options through March of next year	Phan	9/21/2021	Planning Director to provide information on current outdoor dining extension
32	promote the stem cell donor outreach with a webinar and campaign to help increase the number of donors	Chua	8/17/2021	Staff will include the stem cell donor information in regularly scheduled wellness event
33	Include a bust of Maria Lemire on the Mural in front of the Senior Center	Montano	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.
34	Look into opening up the Senior Center on Saturdays for half a day	Chua	8/5/2021	This three-month pilot was kicked off on Saturday Sept. 10.
35	Look into bringing back a roller rink	Montano	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
36	Staff to create a plan on how to increase the number of local businesses doing business with the City	Chua	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.

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

Item # C4.

Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
37	Staff to provide information on a landmark policy for the City of Milpitas	Tran	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.
38	Amendment to the existing ordinance for third-party food delivery vendor services to prohibit regulatory response fees	Phan	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.
39	Requested that staff study the placement of a City sign for the Milpitas Police Department and explore the cost of a new sign	Dominguez	1/18/2021	Staff has been working on upgrading signage and landscaping around the Police Department and Public Works Building. Lit-up signs mounted on the building are scheduled to be installed by the end of December 2022
40	Ordinance to ban vaping in the City	Montano	12/15/2020	Ordinance regarding a ban on use in certain areas adopted by Council on 6/15/2021. Council received a follow-up presentation from staff on 6/21/22 and provided direction on establishing a local tobacco retail permitting program and regulating tobacco retail locations and the sale of flavored tobacco and electronic cigarette products in Milpitas. Staff is now coordinating with the Santa Clara County Department of Environmental Health (DEH) to set up the program, and those arrangement will be brought back to the Council in early 2023.
41	Review City policy on speed bumps	Tran	12/15/2020	Presented to Transportation Subcommittee on 02/12/2021; voted on 3/16/2021 to revisit this item; On April 8, 2022 the Transportation Subcommittee Meeting provided input on a draft policy to be brought forward for Council consideration in Fall 2022
42	Consider Community Museum and Park on Main St.	Phan	8/20/2019	to Rules Subcommittee 8/23/2019. Moved to Specific Plan Community Conversation events.

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

Item # C4.

Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
	City to highlight mental health resources on the website	Dominguez	8/17/2021	Staff issued an Information Memorandum on August 1, 2022
	Look into allowing outdoor music and would like the ordinance brought back to Council.	Montano	8/5/2021	Approved to move forward at the 1/11/2022 Council meeting; scheduled for 8/9/22 City Council Meeting
	Requested that the City have mini-libraries in the low-income areas of the City.	Montano	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.
	Consider change in term limits for Mayor + Councilmembers	Montano	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 forward with a ballot measure for the Mayor term limit; Councilmember term limits scheduled for June 7; Scheduled for June 21 meeting; Ballot Measure to appear on November 8, 2022 General Municipal Election
	Prepare a report on ghost guns; engage in legislative advocacy regarding ghost guns; and incentivize ghost gun buybacks at the May buyback event	Dominguez; Tran	4/5/2022	Staff issued an Information Memorandum on August 12, 2022. At the gun buyback event held on May 22, 2022, ghost guns were bought back for \$200 vs. handguns and rifles for \$100.
	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	6/7/2022	Item will be agendized for the August 16 City Council meeting including the crime data related to the Homekey Project
	Waive fees for family fundraiser at Milpitas Skate Park	Dominguez	6/14/2022	Staff facilitated the renting of requested City facilities; however, the applicant was not eligible for receiving a fee waiver.
	Agendize a Flag Raising for India Independence Day	Tran	6/14/2022	Item added to 6/21/22 Consent Calendar
	Letter from City Council opposing AB 2181 (Berman) regarding VTA's Board Composition	Tran	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.

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

Item # C4.

	Explore increasing the Conferences/Meetings/Memberships allowance for each Councilmember to \$10,000	Chua	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.
	Science, Technology, and Innovation Commission agendize and explore a comprehensive internet connectivity plan.	Tran	5/3/2022	Item will be agendized for discussion at June STI Commission meeting
	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	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.
	Consider expanding the Fee Waiver Policy eligibility to non-profit organizations outside of Milpitas but the events are specific to Milpitas residents	Chua	3/15/2022	Council approved the policy revision at the June 21, 2022 City Council meeting
	Designate the California Oak Tree as the City's official heritage tree	Montano	2/1/2022	Council approved at the 6/7/2022 meeting.
	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	11/2/2021	This item was postponed by Mayor Tran due to the Omicron variant and a rise in COVID-19 cases
	Bring back a conversation in the budget meeting to fund "walking beats" in the commercial and high crime areas	Dominguez	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
	Fee waiver for the Filipino American South Bay Community to hold pop-up resource fair at a City Park	Dominguez	3/1/2022	Staff engaged organizers of the event; event was held on June 19; organizers did not request a fee waiver
	Agendize an update to the Lobbyist Ordinance for the next meeting	Chua	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; Council approved the ordinance on 6/7/2022
	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	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
	Requested staff work with the Vice Mayor and Mayor to explore and discuss building height limits near the hillside by January 2022	Tran	9/21/2021	Approved to move forward at the 1/11/2022 Council meeting; I scheduled for 6/21/2022

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

Item # C4.

	Work with the school district to have a contest to create art murals for the pillars on Main Street	Montano	9/7/2021	Approved to move forward at the 1/11/2022 Council meeting; funding allocated to Great Mall Pkwy. VTA pillar murals
	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	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.
	Discussion in the next fiscal year, to have a sliding scale permitting program for seniors and low-income residence for necessary safety renovations	Tran	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
	Discussion to reduce the City's Senior Center facilities deposit	Montano	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; Council approved the item on 4/19/22 as part of the Master Fee Schedule
	Staff to look into creating a rose garden with a children's memorial site	Montano	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
	Staff to look into creating "Welcome to Milpitas" signs in key areas of in the City	Montano	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**

Item # C4.

	Staff to provide information to place a measure on the ballot to change the directly elected Mayor to a rotational at-large position	Tran	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
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CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution Updating the Conflict of Interest Code in 2022 and Amending List of Designated Disclosure Positions for the City of Milpitas (Staff Contact: Suzanne Guzzetta, Acting City Clerk, 408-586-3001 and Michael Mutalipassi, City Attorney, 408-586-3041)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	9/20/2022
	<u>Recommendation:</u> Adopt a resolution updating the 2022 City of Milpitas Conflict of Interest Code, including the list of designated positions required to annually file the FPPC Form 700 Statement of Economic Interests.

Background:

The Political Reform Act (Government Code § 81000, et seq.) requires that state and local agencies adopt conflict of interest codes identifying all officials and employees within the agency who make governmental decisions based on the positions they hold. Individuals in those designated positions are obligated to disclose their financial interests as specified in the agency's conflict of interest code.

The City of Milpitas is required to review its Conflict of Interest Code biennially in even years to determine if amendments to the Code are necessary. Amendments include adding newly created qualifying positions, deleting obsolete positions, and revising job titles of existing positions and disclosure categories.

The City's Conflict of Interest Code was last amended on December 15, 2020 as memorialized in City Council Resolution No. 9027. Together with the City Attorney, the Acting City Clerk reviewed the existing code and list of designated positions to make applicable amendments to the Code.

Filers with job titles specified as designated positions are required to file the FPPC Form 700, Statement of Economic Interests, with the City Clerk within thirty days of assuming their designated position, annually by April 1st, and within thirty days of leaving their designated position. In addition, Government Code § 87200 identifies certain City officers such as mayors, city managers, city attorneys, city treasurers, chief administrative officers, members of city councils of cities, and planning commissioners as statutory filers required to file the Form 700.

Since January 2020, all City filers have the option to file their Form 700 through either one of two methods. The first method is to submit an original or "wet signature" hard copy form to the City Clerk's Office. The second method is to file electronically via Netfile – an online platform approved by the Secretary of State for accepting electronic filings of Statements of Economic Interests.

Analysis:

The City Attorney and City Clerk have identified the appropriate City of Milpitas employee classifications to be added to the 2022 City of Milpitas Conflict of Interest Code and Appendix and appear in redline form as attached. Newly created qualifying classifications have been added, obsolete positions removed, and titles of several positions amended. The list of designated positions additionally includes Council-appointed volunteer Commissioners and Alternate Members of seven City Commissions.

It is recommended the City Council adopt a resolution approving the updated 2022 City of Milpitas Conflict of Interest Code and Appendix. Upon adoption of the resolution, the City Clerk will file a copy of the updated Code and list of filers with the Fair Political Practices Commission office in Sacramento by the end of the year.

Policy Alternative:

Alternative: Not to adopt a resolution updating the list of designated positions required to file the FPPC Form 700 Statement of Economic Interests

Pros: None

Cons: By not adopting the resolution, the City of Milpitas Conflict of Interest Code would be out of date, resulting in the City being out of compliance with state law.

Reason not recommended: Failure to adopt a resolution to update the City of Milpitas Conflict of Interest Code will result in having an outdated Conflict of Interest Code and the City will be out of compliance with FPPC Regulations.

Fiscal Impact:

None

California Environmental Quality Act:

Not applicable

Recommendation:

Adopt a resolution updating the 2022 City of Milpitas Conflict of Interest Code, including the list of designated positions required to annually file the FPPC Form 700 Statement of Economic Interests.

Attachments:

- a) Resolution
- b) Exhibit: 2022 City of Milpitas Conflict of Interest Code with Appendix

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING THE CITY OF MILPITAS CONFLICT OF INTEREST CODE, AS REQUIRED BY THE POLITICAL REFORM ACT

WHEREAS, the State of California enacted the Political Reform Act of 1974, Government Code Section 81000 *et seq.* (the “Act”), which contains provisions relating to conflicts of interest which partially affect all officers, employees and consultants of the City and requires all public agencies to adopt and promulgate a Conflict of Interest Code; and

WHEREAS, on August 4, 1992, the Milpitas City Council adopted a Conflict of Interest Code (the “Code”) by Resolution No. 6114, which was last amended on December 15, 2020 by Resolution No. 9027, in compliance with the Act; and

WHEREAS, subsequent changed circumstances within the City have made it advisable and necessary pursuant to Sections 87306 and 87307 of the Act to amend and update the City’s Conflict of Interest Code; and

WHEREAS, the potential penalties for violation of the provisions of the Act are substantial and may include criminal and civil liability, as well as equitable relief which could result in the City being restrained or prevented from acting in cases where the provisions of the Act may have been violated; and

WHEREAS, notice of the time and place of a public meeting on, and of consideration by the City Council of the proposed amended Code was provided each affected designated position and publicly posted for review at the City Clerk’s office and on the City of Milpitas website; and

WHEREAS, a public meeting was held upon the proposed Amended Code at a regular meeting of the City Council on September 20, 2022, at which all present were given an opportunity to be heard on the proposed amended Code.

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 does hereby adopt the proposed amended Conflict of Interest Code, a copy of which is attached hereto as **Exhibit A** and shall be on file with the City Clerk and available to the public for inspection and copying.
3. The amended Conflict of Interest Code of the City of Milpitas shall become effective at the time of its adoption and approval.

PASSED AND ADOPTED this 20th day of September 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta, Acting City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi, City Attorney

EXHIBIT A

Item # C5.

**EXHIBIT A to
Resolution No. _____**

CONFLICT OF INTEREST CODE OF THE CITY OF MILPITAS

California's Political Reform Act (Government Code section 81000, et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation that contains the terms of a standard conflict of interest code which can be incorporated by reference in an agency's code. After public notice and hearing Section 18730 may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation and the attached Appendix [or Appendices], designating positions and establishing disclosure categories, shall constitute the conflict of interest code of the City of Milpitas (City).

All officials and designated positions are required to submit a statement of economic interests and shall file their statements with the City Clerk as the City's Filing Officer. The City Clerk shall make and retain a copy of all original statements filed by the Mayor, City Councilmembers and Planning Commissioners, the City Manager, City Attorney and City Treasurer, and shall forward the originals of paper filed original statements to the Fair Political Practices Commission, as required by Government Code section 87200. The City Clerk shall retain the original statements filed by all other officials and designated positions and will make all retained statements available for public inspection and reproduction during regular business hours, per Government Code section 81008. Beginning in the filing year 2020, the City Clerk is authorized to permit electronic filing of Statements of Economic Interest, using an electronic filing system authorized by the Fair Political Practices Commission.

Adopted by Milpitas City Council on _____, 2022

APPENDIX

CONFLICT OF INTEREST CODE OF THE CITY OF MILPITAS

Adopted _____, 2022

PART A

The phrase “Section 87200 Filer” means each person holding one of the positions defined by California Government Code Section 87200, including each of the following positions:

- a. Mayor
- b. City Councilmember
- c. Planning Commissioner
- d. City Manager
- e. City Attorney
- f. City Treasurer (Director of Finance)
- g. Any City official who manages public investments

Those holding one of the positions above may contact the Fair Political Practices Commission for assistance or written advice regarding their filing obligation if they believe their position has been categorized incorrectly. The Fair Political Practices Commission makes the final determination as to whether a position is a required filer consistent with Section 87200.

DESIGNATED POSITIONS GOVERNED BY THE CONFLICT OF INTEREST CODE

The term “designated position” means any position with the City that is either: (a) identified in this Exhibit “A”; or (b) involves the making or participation in making of governmental decisions which may foreseeably have a material effect on economic interests.

Each of the following positions shall be deemed a Designated Position:

<u>DESIGNATED POSITIONS</u>	<u>DISCLOSURE CATEGORIES</u>
Administrative Analyst II	5
Assistant City Attorney	1, 2
Assistant City Engineer	2, 3, 5
Assistant City Manager	1, 2
Assistant Finance Director	1, 2
Assistant Fire Marshal	2, 3
Assistant Chief of Police	5
Associate Civil Engineer	2, 3, 5
Associate Planner	2, 3, 5, 6
Budget Manager	4
Building Inspection Manager	2, 3, 5, 6
Building Safety and Housing Director	1, 2
Building/Neighborhood Preservation Inspector	2, 3, 5, 6
Building Official	2, 3, 5, 6
Business Systems Analyst/Dev	5
Buyer	4
Capital Improvement Projects Manager	2, 3, 5, 6
City Clerk	5, 6
Community Services Engagement & Inclusion Administrator	1, 2, 7
Deputy City Attorney	1, 2
Deputy City Clerk	5, 6
Deputy City Manager	1, 2
Deputy Director of Information Technology	5
Deputy Fire Chief	5
Deputy Public Works Director	1, 2
Economic Development Director	1, 2
Employee Relations Officer	5
Engineering Director/City Engineer	1, 2
Fire Battalion Chief	5
Fire Chief	5, 6
Fire Captain, Prevention/Hazmat Inspector	3, 6
Fire Marshal	2, 3, 5, 6

Housing & Neighborhood Services Administrator	1, 2, 7
Human Resources Director	5
Information Technology Director	5
Information Technology Manager	5
Plan Review Manager	5
Plan Check Engineer	5
Plan Checker	5
Planning Director	1, 2
Planning Manager	2, 3, 5
Police Captain	5
Police Chief	5
Principal Civil Engineer	1, 2
Principal Planner	1, 2
Public Information Officer	5
Public Works Manager	1, 2
Public Works Director	1, 2
Public Works Inspector	6
Purchasing Manager	4
Recreation and Community Services Director	5
Recreation Services Supervisor	5
Senior Administrative Analyst	5
Senior Accountant	4
Senior Building Inspector	5, 6
Senior Buyer	4
Senior Code Enforcement Officer	6
Senior Human Resources Analyst	5
Senior Plan Check Engineer	5
Senior Planner	1, 2
Senior Public Works Inspector	2, 5, 6
Transportation and Traffic Engineer	2, 3, 5
<u>CITY OF MILPITAS COMMISSIONS</u>	
Arts Commission	5, 7
Community Advisory Commission	1, 2
Economic Development & Trade Commission	1, 2
Energy and Environmental Sustainability Commission	1, 2
Parks, Recreation & Cultural Resources Commission	1, 2
Science, Technology & Innovation Commission	1, 2

CONSULTANTS and NEW POSITIONS

Individuals serving as a consultant as defined in FPPC Regulation 18700.3 or in a new position as defined in Regulation 18734 created since this Code was last approved who make, or participate in making, decisions must file under the broadest disclosure category set forth in this Code, subject to the following limitation: The City Manager may determine, that due to the range of duties or contractual obligations, it is more appropriate to assign a limited disclosure requirement. A clear explanation of the duties and a statement of the extent of the disclosure requirements must be a written document (Gov. Code § FPPC Regulations 18219 and 18734). The City Manager's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code (Gov. Code §81008).

PART B - DISCLOSURE CATEGORIES

Disclosure categories identify the types of economic interests that the designated position must disclose for each disclosure category to which he or she is assigned. "Investment" means financial interest in any business entity (including a consulting business or other independent contracting business) and are reportable if they are either located in, doing business in, planning to do business in, or have done business in during the previous two years in the jurisdiction of the City of Milpitas.

This Conflict of Interest Code does not require the reporting of gifts from outside this City's jurisdiction if the source does not have some connection with or bearing upon the functions or duties of the position, per FPPC Regulation 18730.1.

Following is the list of seven disclosure categories, defined:

Category 1: all investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that are located in, doing business in, or that own real property within the City of Milpitas.

Category 2: all interests in real property which is located in whole or in part within, or not more than two miles outside the boundaries of the City of Milpitas, including any leasehold, beneficial or ownership interest or option to acquire property.

Category 3: all investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that are engaged in land development, construction or the acquisition or sale of real property within the jurisdiction of the City of Milpitas.

Category 4: all investments and business positions in business entities, and sources of income, including gifts, loans and travel payments that provide services, products, materials, machinery, vehicles or equipment of a type purchased or leased by the City of Milpitas.

Category 5: all investments and business positions in business entities, and sources of income, including gifts, loans and travel payments that provide services, products, materials, machinery, vehicles or equipment of a type purchased or leased by the designated positions' department, unit or division.

Category 6: all investments and business positions in business entities, and sources of income, from, business entities subject to the regulatory, permit, or licensing authority of the designated positions' department, unit or division.

Category 7: all investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, and income from a nonprofit or other organization, if the source is of the type to receive grants or other monies from or through the City of Milpitas or its subdivisions.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Accept the FY 2021-22 Commissioners Annual Report for Six (6) Commissions and Approve Six (6) Commission Work Plans for FY 2022-23 (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053; and Walter C. Rossmann, Deputy City Manager, 408-586-3012)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	9/20/2022
	Recommendation: 1. Accept the FY 2021-22 Commissioners Annual Report 2. Approve proposed FY 2022-23 Work Plans for: a. Arts Commission b. Library and Education Commission c. Parks, Recreation and Cultural Resources Commission d. Senior Advisory Commission e. Veterans Commission f. Youth Advisory Commission

BACKGROUND:

The City of Milpitas has 12 Commissions, including the Measure F Oversight Committee, appointed by the Mayor and City Council. On April 16, 2019, the City Council approved the City of Milpitas Standard Commission By-Laws (By-Laws). Per Section 1, titled "Purpose" of the By-Laws, "A Commission serves as an active advisory group to the City Council on a variety of topics as directed by the City Council." Therefore, annually, City Commissions develop and recommend a work plan to outline tasks, goals, and or projects related to their advisory area. Staff works with commissions to develop their respective workplans and takes them to Council for review and approval.

ANALYSIS:

The Arts Commission, Library and Education Commission, Parks, Recreation and Cultural Resources Commission, Senior Advisory Commission, Veterans Commission and Youth Advisory Commission (Commissions) meet at different frequencies such as monthly, bi-monthly, or specially designated months as determined by their By-Law addenda. Commissions began meeting and discussing their FY 2022-23 workplans and have prepared new work plans that may include items from the previous year's plan that were unaccomplished. All Commissions identified work plan items in their FY 2021-22 work plans they would like to carry forward to their FY 2022-23 work plans. Each Commission reviewed tasks from their 2020-21 Work Plans and categorized them as either "Accomplished" or "Carryover." Those tasks are reported in the Commissioners Annual Report Information Memorandum, which is included as an attachment for this item. Carryover tasks in the Annual Report are included in each Commission's proposed 2022-23 Work Plans.

FISCAL IMPACT:

Each Commission is allocated \$1,000 annually by the City Council in the adopted budget. These funds are budgeted and approved as part of the FY 2022-23 budget and are to be used towards City Council approved tasks and projects, and administrative costs related to the Commission. No Commission, with exception of the Arts Commission, has identified additional funds needed to accomplish their work plan. The Arts Commission work plan includes Public Art projects which are funded by the City of Milpitas' Public Art Fund. The Public Art Fund current balance is \$1,253,478. The Arts Commission will return separately to the City Council for public art project budget approval for those proposed projects.

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:

1. Accept the 2021-22 Commissioners Annual Report
2. Approve proposed Fiscal Year 2022-23 Work Plans for:
 - a. Arts Commission
 - b. Library and Education Commission
 - c. Parks, Recreation and Cultural Resources Commission
 - d. Senior Advisory Commission
 - e. Veterans Commission
 - f. Youth Advisory Commission

Attachment(s):

1. 2021-22 Commissioners Annual Report
2. Arts Commission Work Plan
3. Library and Education Commission Work Plan
4. Parks, Recreation and Cultural Resources Commission Work Plan
5. Senior Advisory Commission Work Plan
6. Veterans Commission Work Plan
7. Youth Advisory Commission Work Plan

Arts Commission FY 2022-23 Work Plan

Item # C6.

Topic/Advisory Area	Tasks	Required Resources	Goal Deadline
Public Art Master Plan	Assist with outreach and development of Public Art Master Plan	Consultant, Commission, Staff	Spring 2023
Placemaking through Arts	Assist with ARPA-funded Art Walk event	Commission	Fall 2022
	Work with staff and consultants to incorporate art placemaking opportunities into Main Street and Milpitas Metro development activities	Commission, staff	Ongoing
	Work with staff to incorporate art placemaking into selected City events	Commission, staff	Ongoing
Public Art Installations	Conduct Call for Artists for public art park historical markers, jointly with PRCRC (\$TBD)	Commission, Staff	Fall 2022
	Select and Commission Artists for public art park historical markers, jointly with PRCRC	Commission, Staff	Fall 2022
	Conduct RFQ for Park Art (Sculpture, Functional, Etc.)	Commission, Staff	Fall 2022
	Conduct Invitational Call for Dixon Landing Park artwork (\$30,000)	Commission, Staff	Fall 2022
	Support Mural Program	Commission, Staff	Ongoing
City Public Art Collection	Following conservator evaluation, recommend maintenance schedule for City-owned public art.	Commission, Staff	Spring 2023
Milpitas Arts	Support performing arts in Milpitas.	Commission, Staff	Ongoing
	Support Phantom Art Gallery exhibits.	Commission, Staff	Ongoing
	Promote public awareness of Milpitas Arts and Culture Grants to encourage applications for events. Review and approve up to in-kind value of \$10,000.	Commission, Staff	Ongoing
Arts-related Collaborations	Explore opportunities for an art project in collaboration with Elmwood Correctional Facility	Commission	Spring 2023



MEMORANDUM

Office of the City Manager

DATE: September 15, 2022

TO: Mayor and Councilmembers

THROUGH: Steve McHarris, City Manager *Steve McHarris*

FROM: Ashwini Kantak, Assistant City Manager *Ashwini Kantak*

SUBJECT: City Commissions Annual Report FY 2021-22

This memo is to update and inform City Council on six (6) individual City Commission annual work plan accomplishments from FY 2021-22, and those tasks and goals that are proposed to carry over to the Commission work plans for FY2022-23.

Background

The City of Milpitas has 13 Commissions, each comprised of seven (7) commissioners and two (2) alternates; except for the Planning Commission which has no alternates, and the Parks, Recreation and Cultural Resources Commission which has nine (9) commissioners. Per the City of Milpitas Commission By-Laws Section 1., Purpose, "A Commission serves as an active advisory group to the City Council on a variety of topics as directed by the City Council." Annually, City Commissions develop and recommend a work plan to accomplish tasks, goals, and or projects related to their advisory area. Those work plans are reviewed and approved by City Council.

Commissions meet at different frequencies such as monthly, bi-monthly, or specially designated months as determined by their By-Law addendums. Commissions began meeting and discussing their FY2022-23 workplans in summer 2022 and have prepared new work plans that include items from the previous year's plan that were unaccomplished. The FY 2022-23 workplans for six (6) Commissions (see listing below) were released on Friday, September 16 as part of the September 20 Council meeting agenda packet.

Below please find six (6) Commissions' accomplishments and proposed carryover items from FY2021-22 to the FY2022-23 work plan. The remaining six (6) Commissions will be reporting to City Council by the end of the calendar year.

MEMORANDUM

Accomplishments and Continued Items

Arts Commission

The Arts Commission (AC) was established to advise Council on matters pertaining to the arts in Milpitas, as well as serve as the advisory body for the Public Art Program.

FY 2021-22 Work Plan Item	Accomplished	Carryover	Notes
Milpitas Arts and Culture Grant Program	X	X	Received application(s) however events postponed due to COVID.

Public Art Installations	X	X	Installations are ongoing projects. Delay with some projects due to COVID-19
City Public Art Collection	X	X	Funded through to the CIP
Performing Arts Program	X	X	Ongoing programming
Phantom Art Gallery	X	X	Ongoing programming

Library and Education Advisory Commission

The Library Advisory Commission (LAC) makes recommendations to the City Council on matters pertaining to the operation of library services and facilities in Milpitas.

FY 2021-22 Work Plan Item	Accomplished	Carryover	Notes
County Commissions Forum	X		Commissioners attended via Zoom in February
Special Projects (i.e., essay contest)		X	Youth Essay Writing Contest was deferred to FY22/23 due to logistics complications
Attend Local Library Conference		X	California Public Library Advocates (CPLA) suspended its annual program due to COVID-19
National Library Week	X	X	Ongoing. Commissioner's promoted virtual events
Summer Reading Program	X	X	Ongoing. Commissioner's promoted Summer Reading Program
City Events Volunteering	X	X	"Go Go Biblio" participated in Senior Center's June BBQ event per Commissioner's recommendation.
Library Donor Program	X		During FY21/22, The Milpitas Library Donor Program secured two major donations from community members

Parks, Recreation and Cultural Resources Commission

The Parks, Recreation, and Cultural Resources Commission (PRCRC) advises the Council on operation and maintenance of recreation, leisure services, and historic preservation activities. The Commission also advises on acquisition, planning, and development of new and existing parks and facilities. It assists with identifying, protecting, and enhancing structures and other features reflecting special aspects of the City's cultural heritage.

FY 2021-22 Work Plan Item	Accomplished	Carryover	Notes
Park Name History Project		X	Deferred due to COVID-19
Park and Recreation Master Plan Review – Ongoing	X	X	Reviewed and Recommended to City Council

Annual Park/Facility Tour	X	X	Individually toured and reported back to the Commission
Historic Resource review	X	X	Reviewed historic resources and looking to beginning the new Historic resources master plan project.
Community Bike to Anywhere Event	X	X	Completed and will be yearly
Family Bike Day Mini Event	X	X	Completed and will be yearly
New Park Project and CIP Review	X	X	Reviewed and saw some accomplished areas
Sister cities support within the community		X	Most area connections have been put on hold due to COVID-19. Will look to pick up relations this upcoming year
Community Gardens Review – ongoing	X	X	Reviewed and Recommended to City Council

Senior Advisory Commission

The Senior Advisory Commission (SAC) advises the City Council on matters pertaining to recreation, leisure, and nutrition services for the Senior Citizens of Milpitas.

FY 2021-22 Work Plan Item	Accomplished	Carryover	Notes
Host Welcome Back event in Fall, Open House Event and Resource Fair	X		Hosted Welcome Back and Inter City Resource Fair in October. Hosted Open House event in May.
Promote the Senior Center Resource Area, various health & wellbeing presentations, and social services-related projects throughout the year.	X	X	Commissioners promoted the Senior Center's Resource Area to current and prospective members. Deferred projects to FY 22/23 include health and well-being presentations such as the Healthy Brain Initiative Series.

Support Technology for Seniors Program that helps bridge the digital divide and counter social isolation.	X	.	Commissioners promoted the Google Home Speaker donation distribution and the Chromebook Loaner program for seniors.
Sponsor Senior Center Events and Activities		X	Ongoing.
Support/Participate in Age-Friendly initiatives		X	Most County-led Seniors Agenda Initiatives were held virtually in FY21/22 Including the Dementia Friends Program

Veterans Commission

The Veterans Commission (VC) consists of honorably discharged U.S. veterans or actively serving members in any branch of the U.S. military.

FY 2021-22 Work Plan Item	Accomplished	Carryover	Notes
Serve as knowledge base for Veterans/Local resources and Assistance	X	X	Ongoing
Honoring Milpitas Veterans Memorial Project		X	Currently working with Public Works staff for the requirements of the project.
Adopt-A-Vet		X	Deferred due to COVID-19. Restructuring the program for 22/23.
Annual Veterans Recognition Lunch		X	Deferred due to COVID-19. Scheduled to be held 11/12/22
Assist Milpitas Veterans in need during the Holiday			Was not completed due to Covid 19 restrictions and was removed in 22-23 workplan
Assist with planning of Veterans based City sponsored events	X		Helped with Veterans Day and Memorial Day Ongoing annual item

Youth Advisory Commission

The Youth Advisory Commission (YAC) was established to advise the Council on matters pertaining to youth and teens in Milpitas.

FY 2021-22 Work Plan Item	Accomplished	Carryover	Notes
Identify events in need of service	X	X	Ongoing
Establish Subcommittees	X	X	Ongoing
Holiday Magic – Event Volunteering	X		
Milk and Cookies with Santa	X		
Bike Repair Event	X		
Youth-Commission Advocacy	X		
Health and Mental Wellness	X		
Inter-Generational Programming For Teens	X		
Coding Competition	X		
Spelling Bee	X		
Youth Advisory Commission – Service Scholarship	X		

Library and Education Advisory Commission FY 2022-2023 Work Plan

Work Plan Summary

- Advise and make recommendations on Library operations
- Support greater awareness within the Milpitas community regarding library resources, literacy activities and amenities
- Partner to broaden and enhance literacy and education initiatives based out of the Milpitas Library
- Advise on support of diverse Library initiatives, programs and events

Topic/Advisory Area	Tasks	Required Resources	Goal Deadline
County Commissions Forum	Attend County Commissions Forum and report back	Commission, County Library	February 2023
Essay Contest/Special Projects ** April (Arts, Math and Poetry focus)	Conduct Annual Youth Essay Contest – arrange judging and awards. Dedicate up to \$2,500 from LEAC account for participant awards Special Projects: coordinate special projects including event preparation, marketing, etc.	Commission, Community Partners, City Staff	Fall 2022 or Spring 2023
Attend Local Library Conference	Attend local Library Conference to gain continued library knowledge	Commission	April 2023
National Library Week	Promote program citywide via City of Milpitas Youth Programs, Milpitas Senior Center, general public, etc.	Commission, County Library	April 2023
Summer Reading Program	Promote program citywide via City of Milpitas Youth Programs, Milpitas Senior Center, general public, etc.	Commission, County Library, City Staff	May-August 2022/23
City Events	Attend City Events and promote Literacy and Library Services	Commission, City Staff	FY 2022/23
Library Donor Program	Sustain current Donor Program	Commission, City Staff	FY 2022/23

Parks, Recreation and Cultural Resources Commission
Draft Work Plan FY 2022-23

DRAFT

Item # C6.

Work Plan Goals:

Advise City Council on recreation, park, and historic preservation activities; review and recommend planning and development of new and existing parks and recreation facilities; recommend protecting and enhancing special aspects of the City's heritage

<u>Topic/Advisory Area</u>	<u>Tasks</u>	<u>Required Resources</u>	<u>Deadline</u>
Park Name History Project Phase II	1. Create online webpage (Comm & Dept.)	Commission, Staff, Grants	Jun-23
	2. Cost out physical park markers	Historical Society	
	3. Seek Grants/Identify Funding		
	4. Seek CC approval		
	5. Marker Development & Installation		
Annual Park/Facility Tour	1. Determine theme for tour	Commission , Staff	Annually - June
	2. Confirm location(s)		
	3. Conduct Tour		
Quarterly Reports	1. Receive Quarterly Reports from Recreation	Staff	Quarterly
	Staff on: Community Garden, Program areas		
	Allocations, Recreation, Trends, CIP, Special		
	Events, Grants		
Historic Resource Master Plan Update	1. Review recommendations and make	Commission, Staff,	Jun-23
	recommendation to City Council	County, Historical Society	
Bicycle & Pedestrian Trails	1. Family Bike Day Event	Commission, Staff	Jul-23
	2. Bike repair clinics		
	3. Bike to Anywhere Day		
Ongoing Review	1. Private Development Projects including	Commission, Staff	Ongoing/Per project
	open space		
	2. Make recommendation on Annual CIP Park		
	Improvement Projects & Priorities		

Parks, Recreation and Cultural Resources Commission
Draft Work Plan FY 2022-23

DRAFT

Item # C6.

Sister Cities		1. Outreach to community groups and schools	Commission, Staff	Spring 2023
		2. Maintain existing relationships		
		3. Support current community relationships		
Community Gardens		1. Review Garden Rules & Program as Needed	Commission, Staff	Ongoing
		2. Make Recommendation on New McCandless Park Site Program		
		3. Recommend any updates, changes		

Veterans Advisory Commission FY 2022-23 DRAFT Work Plan

Item # C6.

Topic/Advisory Area	Tasks	Required Resources	Goal Dead
Serve as Knowledge base for Veterans/Local Resources and Assistance by hosting a Resource Fair in 2022/2023	Work with Veterans Service Office on all events that are sponsored/co-sponsored by the Commission. Maintain and update the Veterans webpage for the City, to include items such as: policies, burial benefits, shelter, hospitals, programs, resources and events.	Commission, Staff, Other Veteran Agencies	FY 2022-2023
Assist with planning of Veteran based City Sponsored Events	Work with City Staff to incorporate items to the Annual Veterans Day and Memorial Day ceremonies.	Commission, Staff	FY 2022-2023 Event Calendar Dates 11/11/22 & 5/29/2023
Annual Veterans Recognition Lunch	Work with City staff to host the Annual Recognition Lunch, decide menu, decorations, entertainment, speaker, fundraising and recognition of the Veteran of the Year etc.	Commission, Staff	Nov 2022
Say Hi to a Hero	Work with Milpitas schools and the City of Milpitas Recreation and Community Services after school programs to teach students on how to properly raise and lower the flag: provide education sessions for elementary age students; work directly with the Milpitas High School NJROTC on mentorship and involvement with special events.	Commission, MUSD, Staff	FY 2022-2023
Honoring Milpitas Veterans Memorial	Work with Milpitas staff to research the implementation of a permanent Memorial honoring Milpitas Veterans in the form of bricks in the Veteran s Plaza Area.	Commission, Staff	FY 2022-2023
Veteran of the Year	Work with the Milpitas community to nominate veterans for the Veteran of the Year award	Commission	FY 2022-2023
Locating Milpitas Veterans	Work with City Staff to provide additional resources for locating Milpitas Veterans.	Commission, Staff	FY 2022-2023

City of Milpitas
Senior Advisory Commission FY 2022-2023 Work Plan

The Commission advises the City Council on matters pertaining to recreation, leisure, and nutrition services for the Senior Citizens of Milpitas.

Work Plan Summary

- Establish Wellness & Resources action plan with a focus on senior's health, wellness & mental wellbeing activities
- Establish Senior's Events action plan with a focus on the annual Resource Fair and Open House Event
- Sponsor Senior Center-based events and support "Age-Friendly," Milpitas HOPE and Seniors' Agenda activities

Topic/Advisory Area	Tasks	Required Resources	Goal Deadline
During the year, host the Senior Center's annual Open House event and Resource Fair	Determine event components needed, delegate tasks equitably and assist staff with marketing and promotion ahead of the event's date.	Commission, Community Partners, City Staff	One month prior to event date
Promote the Senior Center Resource Area , various health and wellbeing presentations , and social services-related projects throughout the year including Milpitas HOPE activities	Assist the Social Services Coordinator in overseeing the Resource Area and helping promote its benefits to our members. Assist with the promotion of various social services-type projects such as Milpitas HOPE, Dementia Friends, etc.	Commission, Community Partners, City Staff	Ongoing
Support Technology for Seniors program that helps bridge the digital divide and counter social isolation	Help promote the program and its benefits to Milpitas Seniors. Contribute \$150 each college semester for two semesters (\$300 total) from Senior Advisory Commission account for 1 college intern equivalent to lead the program and provide tech support to participants.	Commission, Community Partners, City Staff	Ongoing
Sponsor Senior Center Events and Activities	Sponsor and promote: Birthday Celebrations, Themed Dances, Holiday Events, Multi-Cultural Events, etc.	Commission, City Staff	Ongoing
Support/Participate in "Age-Friendly" Initiatives	Promote and participate in Age-Friendly Initiatives and Santa Clara County Seniors' Agenda activities.	Commission, Community Partners, City Staff	Ongoing

City of Milpitas
Senior Advisory Commission FY 2022-2023 Work Plan

The Commission advises the City Council on matters pertaining to recreation, leisure, and nutrition services for the Senior Citizens of Milpitas.

Work Plan Summary

- Establish Wellness & Resources action plan with a focus on senior's health, wellness & mental wellbeing activities
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- Sponsor Senior Center-based events and support "Age-Friendly," Milpitas HOPE and Seniors' Agenda activities

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Item # C6.

-Ensure community engagement by volunteerism -Set up and execute at least four youth/teen events	-Ensure success of Teen Center participation with program promotion
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50



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	FY 2021-22 Fourth Quarter Financial Status Report, Fund Balances Thereof and Related Budget Amendments to Close-out the FY 2021-22 Budget (Staff Contact: Lauren Lai, Director of Finance, 408-586-3111)
Category:	Leadership and Strategic Support Services
Meeting Date:	9/20/2022
Recommendation:	1. Review the FY 2021-22 Quarterly Financial Status Report for the quarter ending June 30, 2022 (unaudited), and 2. Approve budget, contingency and reporting recommendations

BACKGROUND:

On June 1, 2021, the City Council approved the Fiscal Year (FY) 2021-22 Adopted Operating Budget in the amount of \$195.2 million and the General Fund Budget in the amount of \$110.8 million. The City Council approved budget amendments that realigned revenue with updated projections and reduced personnel and non-personnel costs. Consistent with the fiscal reporting policies, staff monitors and tracks revenues and expenditures for all funds with an emphasis on the General Fund and Enterprise Funds.

ANALYSIS:

This staff report provides the final quarterly update for FY 2021-22 on budget versus actual revenues and expenditures of the General, Water and Sewer Funds, based on unaudited financial reports as of June 30, 2022. Further, this staff report includes recommendations to close out the FY 2021-22 budget and implement the Council approved reserve policies.

Fourth Quarter Financial Status Report

The summary information below as well as the attachments provide an overview of the financial status for the General, Water, and Sewer funds for FY 2021-22 as of June 30, 2022, a variance analysis of budget versus actual revenues and expenditures for the fourth quarter of FY 2021-22. The table below briefly summarizes the unaudited General Fund FY2021-22 revenues, expenditures, use of reserves and surplus of \$7.7 million, which is primarily due to one-time revenue and expenditure savings.

General Fund (\$ million)	FY2021-22 Adopted Budget	FY2021-22 Amended Budget As of 6/30/2022	Unaudited Actual As of 6/30/2022	Budget Variance
Revenue	\$110.8	\$112.9	\$119.0	\$6.1
Expenditure	117.0	114.9	111.3	(3.6)
Surplus/(Deficit)	0	(2.0)*	7.7	

*Primarily due to prior year encumbrances POs and contracts

General Fund Revenues (Attachment 1)

For the twelve months ending June 30, 2022, the General Fund has received \$119.0 million in revenues, or 105.4%, of the FY 21-22 amended operating budget of \$112.9 million, which includes operating transfers in. The variance is primarily due to one-time revenues related to property tax (\$1.5 million), sales and use tax (\$1.5 million), charges for services (\$1 million), and license & permits (\$1.2 million). The amended budget of \$112.9 million is comprised of the \$110.8 million of the adopted budget plus the budget amendments of \$1.6 million and a grant carryover of \$0.5 million. A summary analysis on major revenue sources of unaudited figures is provided below.

General Fund Revenues	FY22	FY22	FY22	FY22
	Amended	Revenue	Revenue	Percentage
	Budget as of 02/15/22	As of 06/30/22	Outstanding Favorable/ (Unfavorable)	of Amended Budget
Property Tax	\$ 41,269,917	\$ 42,758,866	\$ 1,488,949	103.6%
Sales and Use Tax	26,635,511	27,752,789	\$ 1,117,278	104.2%
Sales and Use Tax - Measure F	6,308,250	6,611,485	\$ 303,235	104.8%
Licenses, Permits & Fines	9,915,764	11,115,358	\$ 1,199,594	112.1%
Hotel/Motel Tax	7,470,087	8,012,001	\$ 541,914	107.3%
Operating Transfer In	6,852,931	6,752,931	\$ (100,000)	98.5%
Franchise Fees	5,298,656	5,187,786	\$ (110,870)	97.9%
Charges for Services	4,685,068	5,686,474	\$ 1,001,406	121.4%
Intergovernmental	2,793,899	2,968,070	\$ 174,171	106.2%
Other Taxes	1,023,421	1,366,018	\$ 342,597	133.5%
Interest Income	300,000	263,226	\$ (36,774)	87.7%
Other Revenues	388,200	560,995	\$ 172,795	144.5%
Total General Fund Revenue	\$ 112,941,704	\$ 119,035,999	\$ 6,094,295	105.4%

- Property Taxes and Redevelopment Property Tax Trust Fund: For the twelve months ending June 30, 2022, \$42.8 million, or 103.6%, of the \$41.3 million of the amended budget has been received. Revenues are 4.1% higher than last year at the same time, due to a higher Excess ERAF payment received. The City received \$3.9 million in comparison with \$2.5 million budgeted for Excess ERAF. This \$1.4 million of favorable Excess ERAF is one-time and Santa Clara County continues to caution the City against relying upon this surplus in future years. The court case is waiting the appeal period to expire and for that reason, this litigation remains a contingency.
- Sales & Use Tax: For the twelve months ending June 30, 2022, \$27.8 million, or 104.2%, of the \$26.6 million amended budget has been received. Revenues are 16.7% greater than last year at the same time, which is an indication of recovery from the COVID pandemic.
- Sales & Use Tax - Measure F: The district tax became operative April 1, 2021 and sunsets in eight years. For the quarter ending June 30, 2022, the City received \$6.6 million, or 104.8%, of the amended budget. This is the first full fiscal year of Measure F revenues.
- Franchise Fees: For the twelve months ending June 30, 2022, \$5.2 million, or 97.9%, of the \$5.3 million amended budget has been received. Revenues are 3.0% greater than last year at the same time.
- Hotel/Motel (TOT) Tax: For the twelve months ending June 30, 2022, \$8.0 million, or 107.3%, of the \$7.5 million amended budget has been received. Revenues are 90.2% greater than last year at the same time which is due to less COVID-19 restrictions and hotel revenue recovery. At \$8.0 million, it remains 45% below historical high of \$14.5 million in FY2018-19.
- License and Permits: For the twelve months ending June 30, 2022, \$11.1 million, or 112.1%, of the \$9.9 million amended budget has been received. Revenues are 1.1% higher than last year at the same time.
- Charges for Services: For the twelve months ending June 30, 2022, \$5.7 million, or 121.4%, of the \$4.7 million amended budget has been received. Revenues are 24.5% greater than last year primarily due the end of mask mandates and strict COVID-19 regulations which allowed for regular programming,

compared to last fiscal year's COVID-19 cancellation of classes and activities that required Recreation fees refunds.

- **Intergovernmental:** For the twelve months ending June 30, 2022, \$3.0 million, or 106.2%, of the \$2.8 million amended budget has been received. Revenues are 39.5% lower than last year primarily due to less fire mutual aid reimbursement. Intergovernmental revenues have offsetting expenditures.

General Fund Expenditures (Attachment 2)

For the twelve months ending June 30, 2022, the General Fund expenditures was \$111.3 million (including encumbrance of \$1.9 million), which is \$3.6 million (3.1%) less than the amended budget of \$114.9 million. The budget represents the adopted appropriation of \$110.8 million, plus \$2.1 million of prior year encumbrances, \$0.4 in grants carry over, and \$1.6 million in amendments. As a result of general recruitment and/or competitive labor markets, staff vacancies primarily contributed to the expenditures savings. Consequently, it is prudent to deem this as one-time expenditure variance that provides additional fund balance resources, instead of on-going reductions of General Fund operating budget.

Unanticipated Expenditure Reserve

In accordance with the City Council approved Budget Guidelines, as part of the quarterly financial status reports, staff shall report on the use of the Unanticipated Expenditure Reserve for the 4th quarter.

Description	Amount
Soundwall Replacement	33,357
Pickleball Pilot Program	3,000
AG Witt Services related to FEMA COVID Claims	13,245
TOTAL for the Quarter Ending June 30, 2022	\$ 49,602

General Fund Reserve Policies Implementation and recommendation

For the fiscal year ended June 30, 2022, the City's General Fund unaudited net surplus is \$7.7 million, with revenues of \$119.0 million and expenditures of \$111.3 million. This net surplus is deemed one-time because the favorable revenue variances are primarily non-recurring and the expenditure savings are predominately due to staff vacancies.

Based on the General Fund unaudited FY 2021-22 operating expenditures of \$111.3, the reserve target for the Contingency Reserve and the Budget Stabilization Reserve (BSR) is set at \$18.6 million or 16.67% of approximately \$111.3 million. Consistent with the Council approved General Fund Reserve Policies (resolution no. 9167, dated June 7, 2022), staff allocated the FY 2021-22 General Fund surplus as illustrated in table below. Also important of note, due to the pending education relief augmentation fund (ERAF) litigation, the proposed surplus allocation sets aside \$1.2 million for ERAF Litigation Contingency, which is based upon County contingency guidance of 30% of \$3.9 million FY22 ERAF revenues.

(in millions)	FY 2020-21 Reserve (as of 6/30/2021)	Recommended Allocation/ Per Council Policy	FY 2021-22 Reserve balance (as of 6/30/2022)	Reserve Target Per Fiscal Policies
Contingency Reserve	18.3	0.3	18.6	18.6
Budget Stabilization Reserve	18.3	0.3	18.6	18.6
Future Deficit Reserve	1.5	-	1.5	N/A
ERAF Litigation Contingency	-	1.2	1.2	N/A
CalPERS Rate Stabilization *	2.8	1.3	4.1	N/A
Artificial Turf Replacement	1.4	0.2	1.6	2.0
Facilities Replacement Fund	7.0		7.0	10.0
Total General Fund Assigned Reserve	\$49.3	\$3.3	\$52.6	
CalPERS Rate Stabilization		0.9	0.9	
General Government CIP (20%)		0.7	0.7	
Storm Drain (30%)		1.0	1.0	
Housing Community Benefit (10%)		0.4	0.4	
Transportation & Transit (10%)		0.4	0.4	
Technology Replacement Fund (20%)	2.0	0.7	2.7	5.0
Gen Fund Unassigned (10%)	0.2	0.4	0.6	
Subtotal		4.3	6.5	
Total Fund Balance Allocation	\$49.3	\$7.7	\$59.2	

* Pension 115 Trust is presented separately

Water Maintenance & Operation (M&O) Fund Financial Status (Attachment 3)

Revenues: For the twelve months ending June 30, 2022, \$30.2 million of charges for services, or 97.1%, of the \$31.1 million budgeted has been received. Total revenue received amounts to \$31.0 million, or 98.4%, of the \$31.5 million budgeted.

Expenditures: For the twelve months ending June 30, 2022, \$27.4 million, or 95.7%, of the \$28.6 million amended budgeted has been spent.

Water Fund Expenditure Savings: For the fiscal year ended June 30, 2022, the Water Fund realized unaudited revenues of \$31.0 million and expenditures of \$27.4 million. This resulted in a one-time Water Fund expenditure savings of \$3.7 million. Consistent with the General Fund, the Council approved budget policy stipulates surplus allocations into reserves for capital improvements, rate stabilization, pension, and infrastructure replacement.

Sewer Maintenance & Operation (M&O) Fund Financial Status (Attachment 3)

Revenues: For the twelve months ending June 30, 2022, \$21.3 million of charges for services, or 103.3%, of the \$20.7 million budgeted has been received. Total revenue received amounts to \$21.7 million, or 103.4%, of the \$21.0 million budgeted.

Expenditures: For the twelve months ending June 30, 2022, \$13.3 million, or 73.8%, of the \$18.0 million amended budgeted has been spent.

Sewer Fund Expenditure Savings: For the fiscal year ended June 30, 2022, the Sewer Fund realized unaudited revenues of \$21.7 million and expenditures of \$13.3 million. This resulted in a one-time Sewer Fund expenditure savings of \$8.4 million. Consistent with the General Fund, the Council approved budget policy stipulates surplus allocations into reserves for capital improvements, rate stabilization, pension, and infrastructure replacement.

Budget Amendment Recommendations

Staff recommends approval of various budget amendments to align appropriations to actual expenditures incurred, services rendered, and revenues received. The budget appropriation amendment recommendations are summarized below:

- a. Increase Fire General Fund (Fund 100) from Non-Departmental (Fund 100) budget by \$1,610,000. The budget variance is due to leave cash out and overtime, especially due to minimum staffing. Due to the COVID pandemic, FY2021-22 overtime had an extraordinary level of backfill for sick leave and/or family medical leave act (FMLA) leave.
- b. Increase Building Safety from Affordable Housing Restricted Fund 216 fund balance by \$57,500 due to pending REAP grant reimbursement which is anticipated in next fiscal year.
- c. Increase Affordable Housing Restricted Fund 216 grant revenue and appropriation by \$62,823 for the REAP grant portion expended and receivable as of 6/30/2022.
- d. Increase Non-Departmental CFD 2008 (Fund 238) budget from Fund 238 fund balance budget by \$223.
- e. Increase Non-Departmental CFD 2008 (Fund 238) budget from Fund 238 fund balance budget by \$12,100 for higher utility costs.
- f. Increase Community Planning Fund (Fund 214) from Fund 214 fund balance budget by \$13,100 due primarily to leave cash out.
- g. Increase CP #6132 Sewer Master Plan Update budget by \$1,132 from Fund 450 residual cost

Reporting Recommendation:

These quarterly fiscal reports provide a timely update of the City's general fund and enterprise funds. For fiscal year 2021-22, Council requested a status report on the FY22 Council approved budgeted contracts. Staff delivered these status reports monthly through a process that is fairly time-consuming and starting in fiscal year 2022-23, Staff recommends pivoting that time to implementing innovations in various Finance operations and relying upon existing reporting functions to provide efficient updates, such as these quarterly reports, mid-year reports, and the annual budget development process.

POLICY ALTERNATIVE(S):

Alternative 1: Direct adherence to reserve policy without set aside for ERAF litigation contingency.

Pros: More resources may be allotted to other priorities.

Cons: ERAF litigation may be appealed and this matter may ultimately result in a negative outcome(s) for the City and resources may not be available for the potential financial obligation(s).

Reason not recommended: Staff recommends a conservative approach to this complex ERAF legal matter and to set aside FY2021-22 surplus until final litigation resolution, which is anticipated in FY2022-23 and at which time, the Council may direct Staff to re-allocate these resources for future use should the matter prevail in the City's favor.

FISCAL IMPACT:

For the fiscal year ended June 30, 2022, the City's General Fund unaudited surplus of \$7.7 million, with revenues of \$119.0 million and expenditures of \$111.3 million. This result is primarily from one-time revenues and expenditure savings. If Council approves the recommendations outlined in this report, there is no fiscal impact to General Fund, Water Fund and Sewer fund balance and nominal reductions of fund balances for fund 214 (\$13,100), fund 216 (\$57,500), fund 238 (\$12,323) and fund 450 (1,132).

California Environmental Quality Act (CEQA):

This item is not a Project under CEQA exempt under CEQA Guideline 15378(b)(4) as it is a government fiscal activity that does not involve a commitment to any specific project which may result in a potentially significant physical impact on the environment.

RECOMMENDATION:

1. Review the FY 2021-22 Quarterly Financial Status Report for the Quarter Ending June 30, 2022, and
2. Approve budget, contingency and reporting recommendations

Attachment(s):

1. FY 2021-2022 General Fund Revenues Report for Fiscal Year-To-Date June 30, 2022
2. FY 2021-2022 General Fund Expenditures by Department June 30, 2022
3. FY 2021-2022 Water and Sewer Funds Financial Status for Fiscal Year-To-Date June 30, 2022
4. Budget Change Form

CITY OF MILPITAS

General Fund Revenues

For Fiscal Year-To-Date June 30, 2022

	FY22	FY22	FY22	FY22	FY22	FY22	FY22	FY21	Percentage
	Adopted			Amended	Revenue	Revenue	Percentage	Revenue	Increase
	Budget	Budget	Grant	Budget	As of 06/30/22	Outstanding	of Amended	as of 06/30/21	(Decrease)
General Fund Revenues		Amendments	Carryover	as of 02/15/22		Favorable/ (Unfavorable)	Budget		FY22 / FY21
Property Tax	\$ 41,269,917	\$ -	\$ -	\$ 41,269,917	\$ 42,758,866	\$ 1,488,949	103.6%	\$ 41,093,302	4.1%
Sales and Use Tax	25,633,000	1,002,511	0	26,635,511	27,752,789	\$ 1,117,278	104.2%	23,783,523	16.7%
Sales and Use Tax - Measure F	6,308,250	0	0	6,308,250	6,611,485	\$ 303,235	104.8%	1,330,572	396.9%
Licenses, Permits & Fines	10,276,817	(361,053)	0	9,915,764	11,115,358	\$ 1,199,594	112.1%	10,993,297	1.1%
Hotel/Motel Tax	7,713,639	(243,552)	0	7,470,087	8,012,001	\$ 541,914	107.3%	4,213,325	90.2%
Operating Transfer In	6,552,931	300,000	0	6,852,931	6,752,931	\$ (100,000)	98.5%	16,050,148	-57.9%
Franchise Fees	5,751,133	(452,477)	0	5,298,656	5,187,786	\$ (110,870)	97.9%	5,035,476	3.0%
Charges for Services	4,225,969	459,099	0	4,685,068	5,686,474	\$ 1,001,406	121.4%	4,565,988	24.5%
Intergovernmental	1,154,571	1,119,147	520,181	2,793,899	2,968,070	\$ 174,171	106.2%	4,904,266	-39.5%
Other Taxes	1,023,421	-	0	1,023,421	1,366,018	\$ 342,597	133.5%	1,046,895	30.5%
Interest Income	500,000	(200,000)	0	300,000	263,226	\$ (36,774)	87.7%	1,204,775	-78.2%
Other Revenues	370,000	18,200	0	388,200	560,995	\$ 172,795	144.5%	445,009	26.1%
Total General Fund Revenue	\$ 110,779,648	\$ 1,641,875	\$ 520,181	\$ 112,941,704	\$ 119,035,999	\$ 6,094,295	105.4%	\$ 114,666,574	3.8%

City of Milpitas
General Fund Expenditure By Department Financial Status
For Fiscal Year-To-Date June 30, 2022

Departments	Adopted Budget	Amendments	Grants C/O	Encumb. C/O	Amended Budget	Expenditure	Encumbrance	Total YTD Exp.	% of Amended Budget	FY21 YTD Expenditure Including Encumbrance	% of Amended FY21 Budget
City Council	549,474	-55,450	0	61,914	555,938	307,969	50,933	358,902	64.6%	342,052	76.5%
City Manager *	2,062,856	-24,120	0	27,975	2,066,711	2,114,097	149,830	2,263,927	109.5%	2,198,328	94.9%
City Clerk	570,791	-9,503	0	0	561,288	506,283	0	506,283	90.2%	608,551	101.5%
Economic Development	895,807	-19,879	0	41,500	917,428	835,618	750	836,368	91.2%	822,776	94.2%
Policy Planning	4,078,928	-108,952	0	131,389	4,101,365	3,763,967	201,513	3,965,480	96.7%	3,971,707	93.7%
Building Safety & Housing	5,833,755	-305,067	0	77,669	5,606,357	4,947,675	86,804	5,034,479	89.8%	5,600,986	98.7%
City Attorney	1,029,100	0	0	0	1,029,100	958,092	32,978	991,070	96.3%	1,412,482	104.4%
Engineering	3,740,281	-44,716	0	6,796	3,702,361	3,387,968	42,932	3,430,900	92.7%	3,661,237	95.5%
Finance **	4,180,126	11,500	0	89,258	4,280,884	4,236,111	71,825	4,307,936	100.6%	4,272,250	100.0%
Fire	26,592,973	1,146,305	0	63,496	27,802,774	29,214,829	164,068	29,378,897	105.7%	28,263,765	100.1%
Human Resources	1,865,271	-103,297	0	89,883	1,851,857	1,567,127	61,696	1,628,823	88.0%	1,896,862	89.0%
Information Technology	3,659,100	-100,826	0	48,202	3,606,476	3,234,109	7,830	3,241,939	89.9%	3,562,993	99.7%
Non-Departmental	8,016,549	2,586,665	0	546,043	11,149,257	7,502,509	385,586	7,888,095	70.7%	6,661,942	69.1%
Planning ***	1,712,346	-87,293	323,774	168,087	2,116,914	1,853,035	305,014	2,158,049	101.9%	2,152,184	99.4%
Police	35,606,905	-1,005,866	17,885	330,467	34,949,391	34,734,197	107,969	34,842,481	99.7%	34,712,155	100.0%
Public Works	8,789,060	-210,421	0	574,803	9,153,442	8,637,867	371,372	9,009,239	98.4%	9,355,086	101.6%
Recreation & Community Services	5,334,672	-137,023	12,968	12,713	5,223,330	4,986,898	47,027	5,033,925	96.4%	3,674,168	85.3%
Transfers In/Out/Revenue	340,590	0	0	0	340,590	340,590	0	340,590	100.0%	300,000	100.0%
Grand Total	110,779,656	1,641,009	354,627	2,138,806	114,914,098	109,364,974	1,886,614	111,251,903	96.8%	109,497,817	95.3%

* City Manager - primarily due to leave cash out

** Finance - CIP payroll cost distribution to be posted

*** Planning - temporary position funded via staff vacancy savings

City of Milpitas
Water and Sewer Financial Status
For Fiscal Year-To-Date June 30, 2022 (unaudited)

Water Fund										
Revenue Categories	Adopted Budget	Amendments	Grants C/O	Amended Budget	Receipt	Outstanding	% Receipt	Receipt 6/30/2021	% Receipt 6/30/2021	
Charges for Services	31,143,569	0	0	31,143,569	30,249,470	894,099	97.1%	30,582,368	98.0%	
Intergovernmental	0	0	0	0	205,447	(205,447)	0.0%	111,567	0.0%	
Licenses, Permits & Fines	0	0	0	0	(4,401)	4,401	0.0%	(51,545)	0.0%	
Other Revenues	17,601	0	0	17,601	379,560	(361,959)	2156.5%	0	0.0%	
Use of Money and Property	372,000	0	0	372,000	199,327	172,673	53.6%	10,681	2.3%	
Grand Total	31,533,170	0	0	31,533,170	31,029,403	503,767	98.4%	30,653,071	95.6%	
Sewer Fund										
Expenditures by Department	Adopted Budget	Amendments	Grants C/O	Encumb. C/O	Amended Budget	Expenditure	Encumbrance	Total YTD Exp.	% of Amended Budget	Total YTD Exp. 06/30/2021 % of Amended Budget 6/30/2021
City Attorney	7,071	0	0	0	7,071	4,805	0	4,805	68.0%	385 100.0%
Engineering	0	0	0	29,500	29,500	29,500	0	29,500	100.0%	37,500 56.0%
Finance	1,014,844	0	0	24,652	1,039,496	864,797	0	864,797	83.2%	789,313 75.7%
Non-Departmental	20,571,485	6,498	0	47,461	20,625,444	19,469,599	0	19,469,599	94.4%	19,629,824 101.0%
Public Works	4,141,441	0	0	159,266	4,300,707	4,274,680	0	4,274,680	99.4%	5,018,392 98.8%
Transfers In/Out/Revenue	2,571,407	0	0	0	2,571,407	2,571,407	0	2,571,407	100.0%	2,798,779 100.0%
Grand Total	28,306,248	6,498	0	260,879	28,573,625	27,214,788	0	27,214,788	95.2%	28,274,193 99.5%
Sewer Fund										
Revenue Categories	Adopted Budget	Amendments	Grants C/O	Amended Budget	Receipt	Outstanding	% Receipt	Receipt 6/30/2021	% Receipt 6/30/2021	
Charges for Services	20,657,555	0	0	20,657,555	21,338,805	(681,250)	103.3%	19,897,504	96.2%	
Intergovernmental	100,035	0	0	100,035	100,623	(588)	0.0%	13761	0.0%	
Licenses, Permits & Fines	0	0	0	0	(11,746)	11,746	0.0%	-26874	0.0%	
Operating Transfer In	11	0	0	11	11	(0)	102.2%	0	0.0%	
Use of Money and Property	251,000	0	0	251,000	287,809	(36,809)	114.7%	162,837	80.6%	
Grand Total	21,008,601	0	0	21,008,601	21,715,502	(706,901)	103.4%	20,047,228	95.0%	
Expenditures by Department	Adopted Budget	Amendments	Grants C/O	Encumb. C/O	Amended Budget	Expenditure	Encumbrance	Total YTD Exp.	% of Amended Budget	Total YTD Exp. 6/31/2021 % of Amended Budget 6/31/2021
City Manager	0	0	0	0	0	0	0	0		186 0.0%
Engineering	0	0	0	14,500	14,500	14,500	0	14,500	100.0%	37,250 55.6%
Finance	586,262	0	0	21,316	607,578	565,230	0	565,230	93.0%	494,080 77.1%
Non-Departmental	10,251,498	368,411	0	1,912,168	12,532,077	8,232,725	0	8,232,725	65.7%	9,454,102 73.5%
Public Works	2,762,327	484,000	0	152,329	3,398,656	3,008,369	0	3,008,369	88.5%	2,513,352 82.1%
Transfers In/Out/Revenue	1,482,966	0	0	0	1,482,966	1,482,966	0	1,482,966	100.0%	3,150,520 192.6%
Grand Total	15,083,053	852,411	0	2,100,313	18,035,777	13,303,790	0	13,303,790	73.8%	15,649,490 85.7%

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From*		To*	
	Account	Amount	Account	Amount
Check one:	100-9104113	\$1,300,000	100-8124113	\$1,300,000
	100-9104112	\$200,000	100-8014112	\$200,000
☐ Budget Appropriation	100-9104112	\$100,000	100-8214112	\$100,000
	100-9104112	\$10,000	100-8224112	\$10,000
☐ Budget Transfer	216-2940	\$57,500	216-5364237	\$57,500
	216-3551	\$62,823	216-5364237	\$62,823
	238-2940	\$223	238-9104237	\$223
	238-2940	\$12,100	238-4244423	\$12,100
	214-2940	\$13,100	214-5124111	\$13,100

1. Review the FY 2021-22 Quarterly Financial Status Report for the quarter ending June 30, 2022 (unaudited), and
2. Approve budget, contingency and reporting recommendations

Background:

On June 1, 2021, the City Council approved the Fiscal Year (FY) 2021-22 Adopted Operating Budget in the amount of \$195.2 million and the General Fund Budget in the amount of \$110.8 million. The City Council approved budget amendments that realigned revenue with updated projection and reduced personnel and non-personnel costs. Consistent with the fiscal reporting policies, staff monitors and tracks revenues and expenditures for all funds with an emphasis on the General Fund and Enterprise Funds.

Analysis:

This staff report provides the final quarterly update for FY 2021-22 on budget versus actual revenues and expenditures of the General, Water and Sewer Funds, based on unaudited financial reports as of June 30, 2022. Further, this staff report includes recommendations to close out the FY 2021-22 budget and implement the Council approved reserve policies.

Fourth Quarter Financial Status Report

The summary information below as well as the attachments provide an overview of the financial status for the General, Water, and Sewer funds for FY 2021-22 as of June 30, 2022, a variance analysis of budget versus actual revenues and expenditures for the fourth quarter of FY 2021-22. The table below briefly summarizes the unaudited General Fund FY2021-22 revenues, expenditures, use of reserves and surplus of \$7.7 million, which is primarily due to one-time revenue and expenditure savings.

General Fund (\$ million)	FY2021-22 Adopted Budget	FY2021-22 Amended Budget As of 6/30/2022	Unaudited Actual As of 6/30/2022	Budget Variance
Revenue	\$110.8	\$112.9	\$119.0	\$6.1
Expenditure	117.0	114.9	111.3	(3.6)
Surplus/(Deficit)	0	(2.0)*	7.7	2.5

*Primarily due to prior year encumbrances POs and contracts

General Fund Revenues (Attachment 1)

For the twelve months ending June 30, 2022, the General Fund has received \$119.0 million in revenues, or 105.4%, of the FY 21-22 amended operating budget of \$112.9 million, which includes operating transfers in. The variance is primarily due to one-time revenues related to property tax (\$1.5 million), sales and use tax (\$1.5 million), and license & permits (\$1.2 million). The amended budget of \$112.9 million is comprised of the \$110.8 million of the adopted budget plus the budget amendments of \$1.6 million and a grant carryover of \$0.5 million. A summary analysis on major revenue sources of unaudited figures is provided below.

General Fund Revenues	FY22	FY22	FY22	FY22
	Amended Budget as of 02/15/22	Revenue As of 06/30/22	Revenue Outstanding Favorable/ (Unfavorable)	Percentage of Amended Budget
Property Tax	\$ 41,269,917	\$ 42,758,866	\$ 1,488,949	103.6%
Sales and Use Tax	26,635,511	28,091,127	\$ 1,455,616	105.5%
Sales and Use Tax - Measure F	6,308,250	6,273,147	\$ (35,103)	99.4%
Licenses, Permits & Fines	9,915,764	11,115,358	\$ 1,199,594	112.1%
Hotel/Motel Tax	7,470,087	8,012,001	\$ 541,914	107.3%
Operating Transfer In	6,852,931	6,752,931	\$ (100,000)	98.5%
Franchise Fees	5,298,656	5,187,786	\$ (110,870)	97.9%
Charges for Services	4,685,068	5,686,474	\$ 1,001,406	121.4%
Intergovernmental	2,793,899	2,968,070	\$ 174,171	106.2%
Other Taxes	1,023,421	1,366,018	\$ 342,597	133.5%
Interest Income	300,000	263,226	\$ (36,774)	87.7%
Other Revenues	388,200	560,995	\$ 172,795	144.5%
Total General Fund Revenue	\$ 112,941,704	\$ 119,035,999	\$ 6,094,295	105.4%

- Property Taxes and Redevelopment Property Tax Trust Fund: For the twelve months ending June 30, 2022, \$42.8 million, or 103.6%, of the \$41.3 million of the amended budget has been received. Revenues are 4.1% higher than last year at the same time, due to a higher Excess ERAF payment received. The City received \$3.9 million in comparison with \$2.5 million budgeted for Excess ERAF. This \$1.4 million of favorable Excess ERAF is one-time and Santa Clara County continues to caution the City against relying upon this surplus in future years. The court case is waiting the appeal period to expire and for that reason, this litigation remains a contingency.
- Sales & Use Tax: For the twelve months ending June 30, 2022, \$28.1 million, or 105.5%, of the \$26.6 million amended budget has been received. Revenues are 18.1% greater than last year at the same time, which is an indication of recovery from the COVID pandemic.
- Sales & Use Tax - Measure F: The district tax became operative April 1, 2021 and sunsets in eight years. For the quarter ending June 30, 2022, the City received \$6.3 million, or 99.4%, of the amended budget. This is the first full fiscal year of Measure F revenues.
- Franchise Fees: For the twelve months ending June 30, 2022, \$5.2 million, or 97.9%, of the \$5.3 million amended budget has been received. Revenues are 3.0% greater than last year at the same time.

- **Hotel/Motel (TOT) Tax:** For the twelve months ending June 30, 2022, \$8.0 million, or 107.3%, of the \$7.5 million amended budget has been received. Revenues are 90.2% greater than last year at the same time which is due to less COVID-19 restrictions and hotel revenue recovery. At \$8.0 million, it remains 45% below historical high of \$14.5 million in FY2018-19.
- **License and Permits:** For the twelve months ending June 30, 2022, \$11.1 million, or 112.1%, of the \$9.9 million amended budget has been received. Revenues are 1.1% higher than last year at the same time.
- **Charges for Services:** For the twelve months ending June 30, 2022, \$5.7 million, or 121.4%, of the \$4.7 million amended budget has been received. Revenues are 24.5% greater than last year primarily due the end of mask mandates and strict COVID-19 regulations which allowed for regular programming, compared to last fiscal year's COVID-19 cancellation of classes and activities that required Recreation fees refunds.
- **Intergovernmental:** For the twelve months ending June 30, 2022, \$3.0 million, or 106.2%, of the \$2.8 million amended budget has been received. Revenues are 39.5% lower than last year primarily due to less fire mutual aid reimbursement. Intergovernmental revenues have offsetting expenditures.

General Fund Expenditures (Attachment 2)

For the twelve months ending June 30, 2022, the General Fund expenditures was \$111.3 million (including encumbrance of \$1.9 million), which is \$3.6 million (3.1%) less than the amended budget of \$114.9 million. The budget represents the adopted appropriation of \$110.8 million, plus \$2.1 million of prior year encumbrances, \$0.4 in grants carry over, and \$1.6 million in amendments. As a result of general recruitment and/or competitive labor markets, staff vacancies primarily contributed to the expenditures savings. Consequently, it is prudent to deem this as one-time expenditure variance that provides additional fund balance resources, instead of on-going reductions of General Fund operating budget.

Unanticipated Expenditure Reserve

In accordance with the City Council approved Budget Guidelines, as part of the quarterly financial status reports, staff shall report on the use of the Unanticipated Expenditure Reserve for the 4th quarter.

Description	Amount
Soundwall Replacement	33,357
Pickleball Pilot Program	3,000
AG Witt Services related to FEMA COVID Claims	13,245
TOTAL for the Quarter Ending June 30, 2022	\$ 49,602

General Fund Reserve Policies Implementation and recommendation

For the fiscal year ended June 30, 2022, the City's General Fund unaudited net surplus is \$7.7 million, with revenues of \$119.0 million and expenditures of \$111.3 million. This net surplus is deemed one-time because the favorable revenue variances are primarily non-recurring and the expenditure savings are predominately due to staff vacancies.

Based on the General Fund unaudited FY 2021-22 operating expenditures of \$111.3, the reserve target for the Contingency Reserve and the Budget Stabilization Reserve (BSR) is set at \$18.6 million or 16.67% of approximately \$111.3 million. Consistent with the Council approved General Fund Reserve Policies (resolution no. 9167, dated June 7, 2022), staff allocated the FY 2021-22 General Fund surplus as illustrated in table below. Also important of note, due to the pending education relief augmentation fund (ERAF) litigation, the proposed surplus allocation sets aside \$1.2 million for ERAF Litigation Contingency, which is based upon County contingency guidance of 30% of \$3.9 million FY22 ERAF revenues.

(in millions)	FY 2020-21 Reserve (as of 6/30/2021)	Recommended Allocation/ Per Council Policy	FY 2021-22 Reserve balance (as of 6/30/2022)	Reserve Target Per Fiscal Policies
Contingency Reserve	18.3	0.3	18.6	18.6
Budget Stabilization Reserve	18.3	0.3	18.6	18.6
Future Deficit Reserve	1.5	-	1.5	N/A
ERAF Litigation Contingency	-	1.2	1.2	N/A
CalPERS Rate Stabilization *	2.8	1.3	4.1	N/A
Artificial Turf Replacement	1.4	0.2	1.6	2.0
Facilities Replacement Fund	7.0		7.0	10.0
Total General Fund Assigned Reserve	\$49.3	\$3.3	\$52.6	
CalPERS Rate Stabilization		0.9	0.9	
General Government CIP (20%)		0.7	0.7	
Storm Drain (30%)		1.0	1.0	
Housing Community Benefit (10%)		0.4	0.4	
Transportation & Transit (10%)		0.4	0.4	
Technology Replacement Fund (20%)	2.0	0.7	2.7	5.0
Gen Fund Unassigned (10%)	0.2	0.4	0.6	
Subtotal		4.3	6.5	
Total Fund Balance Allocation	\$49.3	\$7.7	\$59.2	

* Pension 115 Trust is presented separately

Water Maintenance & Operation (M&O) Fund Financial Status (Attachment 3)

Revenues: For the twelve months ending June 30, 2022, \$30.2 million of charges for services, or 97.1%, of the \$31.1 million budgeted has been received. Total revenue received amounts to \$31.0 million, or 98.4%, of the \$31.5 million budgeted.

Expenditures: For the twelve months ending June 30, 2022, \$27.4 million, or 95.7%, of the \$28.6 million amended budgeted has been spent.

Water Fund Expenditure Savings: For the fiscal year ended June 30, 2022, the Water Fund realized unaudited revenues of \$31.0 million and expenditures of \$27.4 million. This resulted in a one-time Water Fund expenditure savings of \$3.7 million.

Sewer Maintenance & Operation (M&O) Fund Financial Status (Attachment 3)

Revenues: For the twelve months ending June 30, 2022, \$21.3 million of charges for services, or 103.3%, of the \$20.7 million budgeted has been received. Total revenue received amounts to \$21.7 million, or 103.4%, of the \$21.0 million budgeted.

Expenditures: For the twelve months ending June 30, 2022, \$13.3 million, or 73.8%, of the \$18.0 million amended budgeted has been spent.

Sewer Fund Expenditure Savings: For the fiscal year ended June 30, 2022, the Sewer Fund realized unaudited revenues of \$21.7 million and expenditures of \$13.3 million. This resulted in a one-time Sewer Fund expenditure savings of \$8.4 million.

Budget Amendment Recommendations

Staff recommends approval of various budget amendments to align appropriations to actual expenditures incurred, services rendered, and revenues received. The budget appropriation amendment recommendations are summarized below:

- a. Increase Fire General Fund (Fund 100) from Non-Departmental (Fund 100) budget by \$1,610,000. The budget variance is due to leave cash out and overtime, especially due to minimum staffing. Due to the COVID pandemic, FY2021-22 overtime had an extraordinary level of backfill for sick leave and/or family medical leave act (FMLA) leave.
- b. Increase Building Safety from Affordable Housing Restricted Fund 216 fund balance by \$57,500 due to pending REAP grant reimbursement which is anticipated in next fiscal year.
- c. Increase Affordable Housing Restricted Fund 216 grant revenue and appropriation by \$62,823 for the REAP grant portion expended and receivable as of 6/30/2022
- d. Increase Non-Departmental CFD 2008 (Fund 238) budget from Fund 238 fund balance budget by \$223.
- e. Increase Non-Departmental CFD 2008 (Fund 238) budget from Fund 238 fund balance budget by \$12,100 for higher utility costs.
- f. Increase Community Planning Fund (Fund 214) from Fund 214 fund balance budget by \$13,100 due primarily to leave cash out.
- g. Increase CP #6132 Sewer Master Plan Update budget by \$1,132 from Fund 450 residual cost

Reporting Recommendation:

These quarterly fiscal reports provide a timely update of the City's general fund and enterprise funds. For fiscal year 2021-22, Council requested a status report on the FY22 Council approved budgeted contracts. Staff delivered this status reports monthly through a process that is fairly time-consuming and starting in fiscal year 2022-2, Staff recommends pivoting that time to implementing innovations in various Finance operations and relaying upon existing reporting functions to provide efficient updates, such as these quarterly reports, mid-year reports, and budget development.

Policy Alternatives:

Alternative 1: Direct adherence to reserve policy without set aside for ERAF litigation contingency.

Pros: More resources may be allotted to other priorities.

Cons: ERAF litigation may be appealed and this matter may ultimately result in a negative outcome(s) for the City and resources may not be available for the potential financial obligation(s).

Reason not recommended: Staff recommends a conservative approach to this complex ERAF legal matter and to set aside FY2021-22 surplus until final litigation resolution, which is anticipated in FY2022-23 and at which time, the Council may direct Staff to re-allocate these resources for future use should the matter prevail in the City's favor.

Fiscal Impact:

For the fiscal year ended June 30, 2022, the City's General Fund unaudited surplus of \$7.7 million, with revenues of \$119.0 million and expenditures of \$111.3 million. This result is primarily from one-time revenues and expenditure savings. If Council approves the recommendations outlined in this report, there is no fiscal impact to General Fund, Water Fund and Sewer fund balance and nominal reductions of fund balances for fund 214 (\$13,100), fund 216 (\$57,500), fund 238 (\$12,323) and fund 450 (1,132).

California Environmental Quality Act:

This item is not a Project under CEQA exempt under CEQA Guideline 15378(b)(4) as it is a government fiscal activity that does not involve a commitment to any specific project which may result in a potentially significant physical impact on the environment.

Recommendation:

1. Review the FY 2021-22 Quarterly Financial Status Report for the Quarter Ending June 30, 2022, and
2. Approve budget, contingency and reporting recommendations

Attachments:

1. FY 2021-2022 General Fund Revenues Report for Fiscal Year-To-Date June 30, 2022
2. FY 2021-2022 General Fund Expenditures by Department June 30, 2022
3. FY 2021-2022 Water and Sewer Funds Financial Status for Fiscal Year-To-Date June 30, 2022
4. Budget Change Form

☐ **Check if City Council Approval required.**

Meeting Date: September 20, 2022

Requested by:	Department Head: Lauren Lai	Date: September 20, 2022
Reviewed by:	Finance Director: Lauren Lai	Date: September 20, 2022
Date approved by City Council, if required:		Confirmed by:



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Authorize the City Manager to Execute a Master Encroachment Agreement for Mobilitie, LLC, a Nevada Limited Liability Company for Installation of Network Facilities Within Public Right-of-Way (Staff Contact: Roberto Alonzo, 408-586-3316)
Category:	Consent Calendar-Community Development
Meeting Date:	
	<u>Recommendation:</u> Authorize the City Manager to Execute a Master Encroachment Agreement for Mobilitie, LLC, a Nevada Limited Liability Company for Installation of Network Facilities Within Public Right-of-Way.

BACKGROUND:

Mobilitie, LLC, a Nevada limited liability company is requesting permission to install and operate private underground fiber optic lines within City public right-of-way for its communication network to serve the business community with a focus on connecting data centers and targeted metro business districts. The initial fiber deployment will consist of a high strand count backbone focused on data centers and end user buildings. Mobilitie currently is under contract with the Bay Area Rapid Transit (BART) to install and provide next generation wireless connectivity to BART ridership. Mobilitie will install 150 wayside poles supporting small cell antennas within BART right of way and will provide ubiquitous WI-FI connectivity throughout BART. Following completion of the BART related work, Mobilitie proposes to install a fiber optic backbone alignment through the City of Milpitas, which is anticipated to be along Milpitas Boulevard from Montague Expressway north to the City limit.

ANALYSIS:

Telecommunications providers are authorized to provide Telecommunications Services in the state of California pursuant to a Certificate of Public Convenience and Necessity (CPCN) issued by the Public Utilities Commission of the State of California and, as a telephone corporation, may use public roads and highways pursuant to Public Utilities Code Section 7901. A Master Encroachment Agreement (Attached) is recommended to allow for the installation, maintenance, perpetual use, and outlines the terms and conditions for the use of the public right-of-way.

POLICY ALTERNATIVE(S):

Alternative 1: Not approve the proposed Master Encroachment Agreement with Mobilitie for installation of fiber optic telecommunications equipment with the City's public right of way.

Pros: None

Cons: Not approving the Master Encroachment Agreement may delay installation of the telecommunications equipment and delay business within Milpitas from enhanced communications connectivity.

Reason for Not Recommending: State law has authorized the use of the public right of way for installation of telecommunications equipment. The proposed Master Encroachment Permit Agreement allows for the installation, maintenance, perpetual use, and outlines the terms and conditions for the use of the public right-of-way.

FISCAL IMPACT:

Mobilitie will pay City review costs for plan review and construction inspection for installation of their fiber optic telecommunications equipment within City right of way.

California Environmental Quality Act (CEQA):

Categorically Exempt. The project is categorically exempt from environmental review under the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15303 (New Construction or Conversion of Small Structures), and as a separate and independent basis, CEQA Guidelines Section 15061(b)(3) (Common Sense Exemption). The project involves the construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The proposed project would not have a significant effect on the environment.

RECOMMENDATION:

Authorize the City Manager to Execute a Master Encroachment Agreement for Mobilitie, LLC, a Nevada Limited Liability Company for Installation of Network Facilities Within Public Right-of-Way.

Attachment(s):

Master Encroachment Permit Agreement

Recording Requested By
City of Milpitas

When. Recorded it To:
City of Milpitas
Engineering Director
455 E. Calaveras Blvd.
Milpitas, CA 95035

For the Benefit of
City of Milpitas
Recorded Free
Gov. Code Sec. 27383

(Space above this line for Recorder's Use)

**MASTER ENCROACHMENT AGREEMENT
BETWEEN THE CITY OF MILPITAS
AND MOBILITIE, LLC**

**RELATED TO THE INSTALLATION OF NETWORK FACILITIES
WITHIN PUBLIC RIGHT-OF-WAY**

This Agreement ("Agreement") dated as of [REDACTED], 20[REDACTED] ("Effective Date") is entered into by and between the CITY OF MILPITAS, a California municipal corporation (herein termed "CITY") and Mobilitie, LLC, a Nevada limited liability company (herein termed "ENCROACHER"). CITY and ENCROACHER are sometimes individually referred to herein as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, ENCROACHER is authorized to provide Telecommunications Services (as defined herein) in the state of California pursuant to a Certificate of Public Convenience and Necessity (CPCN) issued by the Public Utilities Commission of the State of California and, as a telephone corporation, may use public roads and highways pursuant to Public Utilities Code Section 7901; and,

WHEREAS, CITY owns, operates and maintains the Public Right-of-Way (as defined herein) within CITY; and,

WHEREAS, ENCROACHER desires to construct Network Facilities (as defined herein) within the Public Right-of-Way within CITY to provide Telecommunications Services; and

WHEREAS, CITY has the authority to regulate the terms and conditions for the use of Public Right-of-Way for the construction, installation, and maintenance of Network Facilities by ENCROACHER.

NOW, THEREFORE, in consideration of the recitals and the mutual promises contained herein, CITY AND ENCROACHER agree as follows:

SECTION 1 **DEFINITIONS**

1.1 Network Facilities or Facilities - Means any and all cables, lines, poles, conduits, access manholes, handholes, pedestals, boxes, and other similar equipment and devices owned or leased by ENCROACHER. The term does not include antennas, cell towers, or other wireless facilities. No portion of Network Facilities shall, without the CITY's prior authorization, be: (1) used by ENCROACHER as all or any portion of a cable television system or community antenna television system; (2) used by ENCROACHER to provide Video Services; or (3) used by ENCROACHER for any purposes other than the provision of Telecommunications Services.

1.2 Public Right-of-Way or Public Rights-of-Way - Means the full width of the right-of-way of any City street, as defined in the California Vehicle Code used by the general public. "Public Right-of-Way" also includes any dedicated public utility easement in which CITY now or hereafter holds any property interest which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining Network Facilities. The term does not include any area designated or delineated as a proposed public street on any tentative subdivision or parcel map approved by CITY which has not yet become a public street.

1.3 Telecommunications Services - Means services that ENCROACHER is authorized to offer and or provide pursuant to any applicable law or CPCN, including its existing CPCN (_____) which authorizes ENCROACHER to provide facilities-based competitive local exchange service and interexchange services. Telecommunications services also includes offering internet access, data transport, private line, and facilities leasing to affiliates and third parties, which may also be offered through an indefeasible right of use to the extent permitted by applicable law.

1.4 Video Services — Means services provided pursuant to any applicable California Video Franchise Certificate issued by the California Public Utilities Commission pursuant to the *Digital Infrastructure and Video Competition Act* (Public Utilities Code, Section 5800 and following, and California Public Utilities Commission decisions pertaining to video services.

SECTION 2 **SCOPE OF USE OF PUBLIC RIGHT-OF-WAY**

2.1 Nothing in the Agreement shall be construed as granting or creating any franchise rights.

2.2 CITY hereby grants an encroachment right to ENCROACHER, subject to reservations, covenants, and conditions herein contained, to construct, install, maintain and operate, and remove Network Facilities within Public Right-of-Way that are located within

the corporate limits of the CITY to provide Telecommunications Services, subject to obtaining all required permits and approvals. ENCROACHER may install replacement poles (subject to the approval of the pole owner and CITY).

2.3 ENCROACHER shall not commence installation of Network Facilities until ENCROACHER has first obtained a permit to do so in accordance with this Agreement and applicable law. Before ENCROACHER applies for any new permits after the Effective Date of this Agreement, ENCROACHER must submit: (i) a comprehensive master plan ("Master Plan") showing at a minimum the location and specific details (i.e., underground depth, above-ground height, etc.) of all Network Facilities presently installed within the City's limits; (ii) a Master Plan showing a high-level design of all Network Facilities presently intended to be installed over the five-year period from the Effective Date; and (iii) the Bond (as defined in Section 8). The Master Plan shall be submitted in conformance with the requirements of the City's Engineering Plans and Maps and Procedures, and the Master Plan shall be completed by a California Licensed Civil Engineer. ENCROACHER shall provide an updated Master Plan annually, showing, to the extent applicable, any change to the Master Plan submitted in the prior year. ENCROACHER does not warrant the continuing accuracy of the Master Plan or any updates to the Master Plan as it relates to anticipated projects, and ENCROACHER may, in its sole discretion, deviate at any time from the Master Plan as it relates to anticipated projects, subject, however, to ENCROACHER providing notice to the City Engineer and updating the Master Plan and, obtaining all appropriate and necessary Encroachment Permits and other licenses, permits, authorizations, and approvals required under this Agreement

2.4 ENCROACHER shall not install or erect any facilities or apparatus in or on other public property or places, or within any privately owned area within CITY which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision or parcel map approved by CITY, except those installed or erected upon public utility facilities now existing, without obtaining the prior written approval of the City Engineer.

2.5 ENCROACHER is not authorized to place any facilities other than Network Facilities in the Public Right-of-Way, without first obtaining written authorizations and required permits (including any necessary franchises) from the CITY, except that the foregoing does not apply to facilities where state law preempts any requirement for local authorization.

2.6 ENCROACHER shall comply with any lawful provision that the CITY may adopt in the future requiring it to obtain a franchise or other authorization and may be required to do so as a condition of the continued effectiveness of this Agreement. The City Engineer shall, subject to applicable laws, be solely responsible for determining what written authorizations and or permits are required. ENCROACHER agrees that once a written authorization and/or permit is determined to be required, ENCROACHER shall first apply for same before challenging the requirement.

2.7 This Agreement does not authorize use of any property other than the City Public Rights of Way. Any use of any other CITY-owned or CITY-controlled property, including but not limited to poles and conduits, shall require a separate agreement.

2.8 No use of any Public Right-of-Way or other interest or property under this

Agreement shall create or vest in ENCROACHER any ownership or other interest in the Public Right-of-Way, streets or any other property or interest of the CITY. This Agreement is not a grant by the CITY of any property interest but is made subject and subordinate to the prior and continuing right of CITY and its assigns to use all the Public Right-of-Way in the performance of its governmental duties and police powers including but not limited to, public use as a street and for the purpose of laying, installing, maintaining, repairing, protecting, replacing, and removing sanitary sewers, water mains, storm drains, gas mains, poles, overhead and underground electric, and telephone lines, electric, cable television, and other utility and municipal uses together with appurtenances thereof and with right of ingress and egress, along, over, across, and in said Public Right-of-Way. ENCROACHER shall have a duty to remove, relocate, and rearrange its facilities within a time frame set forth by CITY (subject to force majeure and events beyond the control of ENCROACHER), and at its own expense (except as otherwise set forth in this Agreement), in order to accommodate such uses, as further provided in this Agreement and applicable law. Further, ENCROACHER shall not cause any unreasonable delay or interference with CITY's access to the Public Right-of-Way. ENCROACHER shall not interfere with the operations of CITY in the Public Right-of-Way, whether or not such interference is considered material.

2.9 The grant of rights in this Agreement is made subject to all easements, restrictions, conditions, covenants, encumbrances, and claims of title which may affect the Public Right-of-Way, and it is understood that ENCROACHER, at its own costs and expense, shall obtain such permission as may be necessary consistent with any other existing rights. No reference herein to a "Public Right-of-Way" shall be deemed to be representation or guarantee by CITY that its interest or other rights to control the use of such property is sufficient to permit its use for such purposes, and ENCROACHER shall be deemed to gain only those rights to use the property as the CITY may have the undisputed right and power to give, and which do not interfere with CITY's needs for uses within the Public Right-of-Way. In the event of any conflict, the use of the subject Public Right-of-Way by ENCROACHER is secondary to the rights and needs of the CITY.

2.10 This Agreement shall be for the non-exclusive use of the Public Right-of-Way. By executing this Agreement, CITY does not agree to restrict the use of the Public Right-of-Way in all or any part of the CITY by any person in the same business, a related business, or a competing business as ENCROACHER.

2.11 If the CITY is not prohibited from charging for use of the Public Right-of-Way by ENCROACHER by state or federal statute, it may do so, and the payment of any lawful compensation established by the CITY shall be a condition of the continued effectiveness of this Agreement.

SECTION 3

CONSTRUCTION AND MAINTENANCE STANDARDS

3.1 The construction, operation or repair and maintenance of Network Facilities shall be in accordance with all applicable Federal, State, and local laws, including, without limitation, zoning laws, construction codes, and CITY's latest standard specifications and details, as the same may exist now, or be hereafter issued, amended or revised, and any supplements thereto or revisions of this Agreement, and any Franchise or other authorization now or in the future. Nothing in this Agreement prevents the CITY from establishing additional or stricter conditions (even with respect to the matters specified in those sections) and requiring ENCROACHER to comply with the same. In the event of a

conflict among codes and standards, the most stringent code or standard, as determined in the sole judgment of the City Engineer consistent with applicable law, shall apply.

3.2 ENCROACHER shall at all times employ reasonable care, within the meaning of applicable law, and shall install, maintain, and use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public.

3.3 This Agreement does not guarantee receipt of a particular permit or approval. CITY reserves the right, and ENCROACHER hereby acknowledges, that CITY may reject without liability the design drawings for any proposed construction and/or require any changes thereto if CITY determines, in its sole and absolute discretion, that such action is necessary to ensure CITY can adequately inspect, clean, maintain, repair, and replace CITY's existing property and structures and/or install additional structures within the Public Right-of-Way.

3.4 ENCROACHER shall construct, operate, and maintain its Network Facilities so as not to endanger or interfere with improvements CITY shall deem appropriate to make, consistent with applicable law, or to interfere in any manner with the Public Right-of-Way or legal rights of any property owner or to unnecessarily hinder or obstruct pedestrian or vehicular traffic. ENCROACHER shall place facilities in strict conformance with the plans and drawings approved in writing by CITY, consistent with applicable law, and shall not place facilities, equipment, or fixtures where they will interfere with any existing gas, electric, telephone, telecommunications, water, sewer, or other utility facilities or obstruct or hinder in any manner such existing use of any Public Right-of-Way. Any and all Public Rights-of-Way, public property or private property that is disturbed or damaged by ENCROACHER during the construction, repair, replacement, relocation, operation, maintenance, or construction of a Network Facility shall be promptly repaired by ENCROACHER, in accordance with the latest CITY standards and to the satisfaction of the City Engineer, to a condition equal to or better than that which existed prior to the damage.

3.5 All construction shall be open and subject to inspection by CITY, and ENCROACHER shall give notice and allow CITY to inspect any underground improvements or installations prior to backfilling.

3.6 If Public Right-of-Way to be used by ENCROACHER has preexisting installation(s) placed in the said Public Right-of-Way, ENCROACHER shall assume the responsibility to verify the location of the preexisting installation by means as directed by City or other preexisting utility owner and notify, consistent with applicable law, CITY and any third-party owner of ENCROACHER's proposed installation. The cost of any work required of such third-party owner or CITY to provide adequate space or required clearance to accommodate ENCROACHER's installation shall, consistent with applicable law, be borne solely by ENCROACHER. Except as required by applicable law, CITY is under no obligation to move its existing utilities out of the way to accommodate or make room for ENCROACHER's Network Facilities.

3.7 Within ten business (10) days after its receipt of a written request from CITY, ENCROACHER shall, at its sole cost and expense, expose its subsurface Network Facility to a depth of one foot (1') below the bottom of such facility by means as directed by CITY. If ENCROACHER fails to perform, CITY may proceed on ENCROACHER's

account and ENCROACHER shall promptly reimburse CITY for the cost of same, plus a 15 percent administrative overhead charge, and CITY is hereby held harmless and indemnified by ENCROACHER for any loss and or damages resulting from the CITY's performance of the required work.

3.8 Any contractor or subcontractor used for the construction, installation, operation, maintenance, or repair of the Network Facility equipment shall be properly licensed under the laws of the State and all applicable local ordinances, and each contractor or subcontractor shall have the same obligations with respect to its work as ENCROACHER would have under this Agreement and applicable law as if the work were performed by ENCROACHER. ENCROACHER shall be responsible for the performance of the work of contractors and subcontractors consistent with the requirements of this Agreement and applicable law, including all acts or omissions of contractors or subcontractor, and ENCROACHER shall implement a quality control program to monitor that the work is properly performed. This section is not meant to alter tort liability of ENCROACHER to third parties.

3.9 ENCROACHER agrees to keep said Network Facilities in good and safe condition and free from any nuisance.

3.10 ENCROACHER shall identify the Network Facilities installed in each Public Right-of-Way by means of an identification method mutually agreed upon by the Parties, or as directed by the City Engineer if the Parties cannot mutually agree on an identification method. Such identification shall be detectable from ground level without opening the street. To prevent conflicts between ENCROACHER's Network Facilities and public facilities in the same location, ENCROACHER shall participate in the USA North 811 Program and notify Underground Service Alert of the location of the facilities for the benefit of future construction projects which may need to be aware of the presence of the Network Facilities within the Public Right-of-Way. Failure of ENCROACHER to comply with this Section shall not create any claim or right against the CITY, and as set forth herein below, ENCROACHER shall indemnify and hold harmless, and defend CITY from any and all costs for failure to comply with this Section.

SECTION 4 **SERVICE CHANGES**

4.1 ENCROACHER hereby represents and warrants that: 1) it has any and all authorizations and approvals from state and federal regulatory agencies including the California Public Utilities Commission and the Federal Communications Commission as are necessary for the activities and Network Facilities contemplated by the Agreement, and is in compliance in all material respects with its obligations under such authorizations; 2) the type of service offered through the Network Facilities in the Public Right of Way consists solely of Telecommunications Services; 3) it does not offer Video Services; 4) Network Facilities will be installed only within the Public Rights-of-Way (underground within conduit or aerial on poles); and 5) it will not construct or install any new cell towers, poles or antennas.

4.2 The terms of this Agreement are based on the type of equipment comprising the Network Facilities, and the types of Telecommunications Services which ENCROACHER provides via the Network Facilities installed in the Public Right-of-

Way. ENCROACHER. acknowledges that any change in service or change in the law may increase the CITY's regulatory authority over such services, product, and ENCROACHER's use of Public Right-of-Way, and may require modification of this Agreement, and require ENCROACHER to obtain additional authorizations consistent with the requirements of an existing or hereinafter-enacted CITY ordinance regulating such services.

4.3 If ENCROACHER is authorized by the California Public Utilities Commission to provide additional and/or alternative services, including but not limited to Video Services, and intends to offer such services to customers within the corporate limits of CITY, ENCROACHER shall notify CITY in writing, as soon as practicable, comply with CITY's local ordinances, and pay to CITY any applicable franchise or other fees.

SECTION 5 **TAXES**

5.1 ENCROACHER agrees that it will be solely responsible for the payment of any and all lawful taxes, fees, and assessments relating to its use and maintenance of the Network Facilities including but not limited to all taxes, fees, and assessments listed in ENCROACHER's CPCN issued by the California Public Utilities Commission.

5.2 ENCROACHER shall provide such records to CITY as CITY may require to confirm compliance with this requirement as it pertains to CITY's taxes, fees, and assessments. The cost of any auditor to conduct such audit shall be borne by ENCROACHER if that audit discloses an underpayment of more than five percent (5%) of the amount remitted. Audits shall not be conducted more than once every two (2) years, and ENCROACHER or CITY shall pay or rebate such amounts discovered by the auditor within sixty (60) days of receipt of the audit report.

5.3 Pursuant to Section 107.6 of the California Revenue and Taxation Code, the CITY hereby advises, and ENCROACHER recognizes and understands, that should ENCROACHER's use of Public Rights-of-Way create a possessory interest subject to property taxation, ENCROACHER may be subject to the payment of property taxes levied on such interest.

SECTION 6 **REMOVAL AND RELOCATION**

6.1 In the event of an emergency, or where Network Facilities create or are contributing to an imminent danger to health, safety, or property, CITY may remove any or all parts of those Network Facilities without prior notice; however, CITY shall make reasonable efforts to provide prior notice and, where prior notice is not given, shall notify ENCROACHER of such work as soon as practicable.

6.2 ENCROACHER shall upon sixty (60) days written notice from the CITY, relocate its facilities at its sole cost and expense to accommodate projects or needs of CITY, or other government agencies or where relocation is necessary to protect and preserve the public health safety or welfare.

6.3 In the event all or any portion of said Public Right-of-Way occupied by said

Network Facilities shall be needed by CITY for governmental purposes (for example, if and when made necessary by any lawful change of grade, alignment or width of any street, including the construction, maintenance, or operation of any underground subway or viaduct by CITY and/or the construction, maintenance, or operation of any other CITY underground or aboveground facilities), or in the event the existence of said Network Facilities shall be considered detrimental to governmental activities, including but not limited to interference with CITY construction projects, or is in conflict vertically and/or horizontally with any proposed CITY installation, ENCROACHER shall, upon sixty (60) days advance written direction of CITY's City Engineer, remove and relocate said Network Facilities to such other location or locations on said Public Right-of-Way as may be designated by CITY, without cost or expense to CITY. Said removal or relocation shall be completed within sixty (60) days of notification by CITY, except for force majeure events or events beyond the control of ENCROACHER.

6.4 ENCROACHER shall, by a time specified by CITY (subject to force majeure events or events beyond the control of ENCROACHER), protect, support, temporarily disconnect, relocate, or remove any of its property when required by CITY or any other governmental entity by reason of traffic conditions; public safety; Public Rights-of-Way construction; Public Rights-of-Way maintenance or repair (including resurfacing or widening); change of Public Rights-of-Way grade; construction, installation, or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned communication system, public work, or improvement, or any government-owned utility; Public Rights-of-Way vacation; or for any other purpose where the work involved would be aided by the removal or relocation of the Network Facility.

6.5 In those areas and portions of the CITY where the transmission or distribution facilities of either all wireline public utility telephone corporations or those of the utility providing electric service (in locations where no wireline public utility telephone corporation has aerial facilities), are underground or hereafter must be placed underground, then ENCROACHER shall likewise construct, operate, and maintain all of its Network Facilities underground, except for Facilities which by their nature are placed above ground (e.g., pedestals, pole risers). For the purposes of this subsection, "underground" shall include a partial underground system. The CITY shall not in any manner be responsible for any costs incurred by ENCROACHER in placing ENCROACHER's facilities underground. ENCROACHER may install new poles (subject to the approval of the pole owner and CITY) if another wireline telephone corporation would be permitted to install new poles at the same location.

6.6 If any portions of the Network Facilities covered under this Agreement other than redundant facilities or facilities for emergency use are no longer used or useful by ENCROACHER, or are abandoned for a period in excess of one (1) year, ENCROACHER shall notify CITY and shall either promptly vacate and remove the facilities at its own expense or, at the discretion of the City Engineer, may abandon some or all of the facilities in place and transfer ownership of those facilities to CITY. Notwithstanding the foregoing, this section shall not apply to Network Facilities installed to meet future demand or needs for capacity.

6.7 When removal or relocation is required under this Agreement. ENCROACHER shall, after the removal or relocation of the Network Facilities, at its own cost, repair and return the Public Right-of-Way in which the facilities were located to a safe and satisfactory

condition comparable to or better to the condition of the Public Right-of-Way prior to the start of such removal or relocation work in accordance with the construction-related conditions and specifications as established by CITY consistent with applicable law. Before proceeding with removal or relocation work, ENCROACHER shall obtain an encroachment permit from the CITY prior to proceeding with any work. Should ENCROACHER remove the Network Facilities from the Public Right-of-Way, ENCROACHER shall, within ten (10) days after such removal, give notice thereof to CITY specifying the right-of-way affected and the location thereof as well as the date of removal.

6.8 In the event said Network Facilities are not removed or relocated within the timelines specified in any CITY notification, subject to force majeure events or events beyond the control of ENCROACHER, CITY may cause the same to be done at the sole expense of ENCROACHER.

SECTION 7 **CONSTRUCTION PERMIT AND FEES**

7.1 ENCROACHER shall obtain an encroachment permit (and such other permits as may be required) for all work and each job within the Public Right-of-Way. ENCROACHER shall furnish detailed plans of the work and other such information as required by the City Engineer of CITY and shall pay all processing, field marking, engineering, and inspection fees prior to issuance of permit in accordance with the rates in effect at the time of payment.

7.2 Any encroachment permit shall set forth the description of the Network Facilities to be installed and the Public Right-of-Way in which such facilities are to be located. CITY may establish construction-related conditions and specifications in addition to those in this Agreement, and these shall also be set forth in the encroachment permit. Following construction, ENCROACHER shall provide as-builts of the facilities and shall further notify Underground Service Alert (USA) of the location of the facilities.

7.3 In addition to any other remedies available in this Agreement or in applicable law, the failure to comply with the terms and conditions of this Agreement may, at CITY's sole discretion consistent with applicable law, result in withholding issuance of any new encroachment permits and/or other enforcement actions pursuant to Milpitas Municipal Code.

SECTION 8 **PERFORMANCE BOND**

8.1 Prior to the issuance of an encroachment permit and undertaking any of the work, installation, improvements, construction, repair, relocation, removal, or maintenance authorized by permits issued for Facilities under this Agreement, ENCROACHER shall cause to be furnished a bond executed by a corporate surety or financial institution authorized to do business in the State of California in the amount of 100% of the estimated total cost of the work to guarantee performance of ENCROACHER's obligations under this Agreement. The bond shall be conditioned so that ENCROACHER shall observe all the covenants, terms, and conditions and faithfully perform all of the obligations of this Agreement including removal and replacement of defective work or materials discovered in CITY's streets or property under any

designated permits, normal wear and tear excepted as reasonably determined by the City. This bond is to guarantee that the work is of good quality and free from any defective or faulty materials or workmanship and will remain in full force and effect for a period of one (1) year after inspection and acceptance of ENCROACHERS completed work. ENCROACHER may meet the obligations of this subsection with one or more bonds acceptable to the CITY. In the event that a bond issued pursuant to this subsection is canceled by the surety, after proper notice and pursuant to the terms of said bond, ENCROACHER shall, prior to the expiration of said bond, procure a replacement bond which complies with the terms of this subsection.

8.2 So long as the bond is in place, it may be utilized by the CITY as provided herein for reimbursement to the CITY by reason of ENCROACHER's failure to pay the CITY for actual costs and expenses incurred by the CITY with respect to damages as a result of ENCROACHERS work and failure to complete repairs as may be directed by City under this Agreement. CITY shall provide notice to ENCROACHER of its intention to draw on the Bond at least fifteen (15) days prior to drawing against the bond during which time ENCROACHER shall have the opportunity to cure any failure to pay any amounts due.

8.3 In the event ENCROACHER has been declared by the CITY to be in default of a material provision of this Agreement relating to removal and if ENCROACHER fails, within 30 days of mailing of the CITY's default notice, to perform any of the conditions of this Agreement with respect to removal, or fails to begin to perform any such condition that may take more than thirty (30) days to complete, CITY may thereafter obtain from the bond, after proper claim is made to the surety, an amount sufficient to compensate the CITY for its damages. Upon such withdrawal from the bond, the CITY shall notify ENCROACHER in writing, by First Class Mail, postage prepaid, of the amount withdrawn and the date thereof.

8.4 Thirty (30) days after the CITY's mailing of notice of the bond forfeiture or withdrawal authorized herein, ENCROACHER shall deposit such further bond, or other security, as the CITY may require, which is sufficient to meet the requirements of this Agreement.

8.5 The rights reserved to the CITY with respect to any bond are in addition to all other rights of the CITY whether reserved by this Agreement or authorized by law, and no action, proceeding, or exercise of a right with respect to any bond shall constitute an election or waiver of any rights or other remedies the CITY may have.

SECTION 9

DAMAGE TO FACILITIES IN PUBLIC RIGHT-OF-WAY

9.1 ENCROACHER shall be responsible for any damage to CITY street pavements, existing utilities, curbs, gutters, sidewalks, and all other public or private facilities due to its construction, operation, installation, maintenance, repair, or removal of its Network Facilities in Public Right-of-Way or due to neglect of Network Facilities, and shall repair, replace and restore in kind the said damaged public and private facilities at its sole expense. ENCROACHER shall complete all necessary repairs within thirty (30) days of notification by City Engineer.

9.2 Any premature deterioration of surface and subsurface improvements, such as trench failures, pavement, base, or concrete failure over the facility or trench or adjacent area, or reduction in the life of the street or Public Right-of-Way as determined by City Engineer, normal wear and tear excepted as may be determined by City Engineer, which results from ENCROACHER's acts or omissions shall be the responsibility of ENCROACHER. ENCROACHER shall complete all necessary repairs within thirty (30) days of notification by City Engineer. If ENCROACHER fails to make repairs within thirty (30) days of notice, CITY may have repairs made with the cost being billed to ENCROACHER. If the repair cannot fully reverse the deterioration or loss of life, the CITY may require ENCROACHER to pay for the damage suffered as a result.

SECTION 10

PARTICIPATION WITH OTHER UTILITIES

10.1 ENCROACHER agrees to cooperate, to the extent commercially reasonable, in the planning, locating, and constructing of its Network Facilities in utility joint trenches or common duct banks with other similar utilities providers and to participate in cost-sharing for the joint trench and ducts, when two or more telecommunications service providers are proposing Network Facilities in the same Public Right-of-Way or when an underground project is being planned by CITY.

10.2 The requirements of this section shall not apply when ENCROACHER's excavation work is due to an emergency or other maintenance or repair event that requires urgent action, however, prior to starting emergency work, ENCROACHER shall contact the City Engineer during normal business hours to notify of said emergency work. If after normal business hours, ENCROACHER shall contact the City's Police Dispatch

SECTION 11

MAPS, RECORDS AND FIELD LOCATIONS

11.1 ENCROACHER shall maintain accurate maps and improvement plans of said Network Facilities located within the City of Milpitas. ENCROACHER shall, upon demand of the City Engineer, deliver to the Engineering Department free of charge within thirty (30) days after such demand, such maps and plans as may be required to show in detail the exact location, size, depth, and description of all Network Facilities installed within said Public Right-of-Way. ENCROACHER shall also submit the plan to CITY in digital electronic format as specified by CITY.

11.2 ENCROACHER shall be a member of USA, the regional notification center for subsurface installations, and shall field mark, at ENCROACHER'S sole expense, the locations of its underground Network Facilities upon notification in accordance with the requirements of Section 4216 of the State of California Government Code, as it now reads or may herein after be amended.

11.3 ENCROACHER shall provide books and records for copying and inspection by CITY, and ENCROACHER's facilities shall be subject to such inspection by the CITY, as the CITY finds appropriate to request in the exercise of its rights under this Agreement and its jurisdiction over ENCROACHER.

SECTION 12

HOLD HARMLESS AND INDEMNIFICATION

12.1 ENCROACHER, jointly and severally, for itself, its successors, agents, and ENCROACHER's employees, agrees to indemnify, defend (with reasonable notice to ENCROACHER and with counsel reasonably acceptable to CITY) and hold harmless CITY, its officers, employees, and agents and any successors to CITY's interest from and against any and all claims, demands, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connections therewith, including, without limitation, reasonable attorney's fees and costs of defense (collectively, the "Losses") arising directly or indirectly out of ENCROACHER's and its employees', contractors', or agents' activities or Network Facilities described in this Agreement and/or the installation, construction, operation, maintenance, removal, and/or repair of the improvement and facilities thereto. ENCROACHER shall indemnify CITY for all of CITY's costs, reasonable attorneys' fees, and damages which CITY incurs in enforcing the indemnification provisions set forth herein. However, ENCROACHER shall not indemnify the CITY, its officers, employees, and agents and any successors to CITY's interest for Losses arising directly or indirectly, from the CITY's gross negligence or willful misconduct. CITY shall not be responsible for any damages, losses, or liability of any kind occurring by reason of anything done or omitted to be done by CITY, except for acts which constitute the CITY's gross negligence or willful misconduct, or by any third party, including, without limitation, damages, losses or liability arising from the issuance by the CITY of a permit or approval to any third party or any interruption in service.

12.2 ENCROACHER, for itself and its successors and assigns, hereby waives all claims and causes of action, whether now existing or hereafter arising, against CITY or its officers, agents or employees, for damages, physical or otherwise, to any of the facilities covered by this Agreement from any cause whatsoever excluding those arising as a result of the CITY's gross negligence or willful misconduct. Under no circumstances shall either Party be liable or responsible to the other Party for special, incidental, indirect, punitive, or consequential damages, whether foreseeable or not, including, without limitation, economic loss or lost profits, in connection with this Agreement or the Party's performance or non-performance of its obligations under this Agreement, regardless of the form of action, whether under contract, warranty, tort, or otherwise, all claims for which are hereby specifically waived.

SECTION 13

INSURANCE

13.1 Types; Amounts. ENCROACHER shall procure and maintain, and shall require its contractors to procure and maintain, during construction of any Public Improvement pursuant to this Agreement, insurance of the types and in the amounts described below ("Required Insurance"). The insurance requirements set forth herein in no way limit the indemnity covenants contained in this Agreement. If any of the Required Insurance contains a general aggregate limit, such insurance shall apply separately to this Agreement or be no less than two times the specified occurrence limit.

13.1.1 General Liability. ENCROACHER and its contractors shall procure and maintain occurrence version general liability insurance, or equivalent

form, with a combined single limit of not less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage, and \$2,000,000 general aggregate including premises-operations, products and completed operations, independent contractor, contractual liability, personal injury, and advertising injury.

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

13.1.3 Workers' Compensation. ENCROACHER and its contractors shall procure and maintain workers' compensation insurance with limits as required by the Labor Code of the State of California and employers' liability insurance with limits of not less than \$1,000,000 for each accident; \$1,000,000 disease for each employee; \$1,000,000 disease-policy limit, at all times during which insured retains employees.

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

13.1.5 Completed Operations. CITY, its elected officials, officers, employees, agents, and volunteers shall be added as an additional insured for completed operations utilizing ISO form CG 20 37, or its equivalent.

13.1.6. Contractors' Pollution Legal Liability. ENCROACHER must maintain Contractors' Pollution Legal Liability insurance with limits of \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate. If any coverage required is written on a claims-made coverage form:

- (1) The retroactive date must be shown, and this date must be before the execution date of the contract or the beginning of contract work.
- (2) Insurance must be maintained, and evidence of insurance must be provided for at least five years after completion of contract work.
- (3) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date, the ENCROACHER must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work.

- (4) A copy of the claims reporting requirements must be submitted to the CITY for review.

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

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

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

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

13.6 Term; Cancellation Notice. ENCROACHER shall maintain the Required Insurance for the term of this Agreement and shall replace any certificate, policy, or endorsement which will expire prior to that date. ENCROACHER shall ensure any contractors who perform work for ENCROACHER in the Public Rights-of-Way also maintain the Required Insurance. ENCROACHER shall provide CITY thirty (30) days prior written notice of the suspension, expiration, cancellation, or reduction below the minimums set forth in this Section 13 for all applicable policies. Such notice shall be sent directly to CITY at 455 East Calaveras Blvd, Milpitas, CA 95035, Attn: City Manager.

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

SECTION 14 **ASSIGNMENT**

14.1 ENCROACHER shall not assign, sublet, or transfer any interest in this

Agreement nor the performance of any ENCROACHER's obligations hereunder, without the prior written consent of CITY, which shall not be unreasonably withheld, and any attempt by ENCROACHER to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect. The transfer of the rights and obligations of ENCROACHER to a parent, successor, subsidiary, or other affiliate (defined for the purposes of this section being any person or entity that, directly or indirectly, controls, is wholly controlled or owned by, or is under common control with ENCROACHER) of ENCROACHER, shall not be deemed an assignment for the purposes of this section; provided that ENCROACHER provides written notice of the transfer to CITY within thirty (30) days of such transfer. For the purposes of this section, the leasing or granting in the ordinary course of business of indefeasible rights of use or similar rights in dark fiber, fiber optic capacity, conduit, and other network elements shall not require the express consent of the CITY, so long as ENCROACHER remains solely responsible for locating, placing, installing, maintaining, relocating, and removing the Facilities.

SECTION 15

TERM AND TERMINATION

15.1 This Agreement shall terminate ten (10) years from the Effective Date unless renewed in writing prior to said termination date, except that this Agreement may be terminated sooner under the following circumstances and consistent with applicable law.

- a. This Agreement may be terminated by CITY upon approval of the City Engineer and at least thirty (30) days written notice to ENCROACHER if CITY reasonably determines that the provisions herein interfere with the use or disposal of said Public Right-of-Way or any part thereof by CITY. Where only a portion of ENCROACHER's Network Facilities interferes with the use or disposal of said Public Right-of-Way, CITY shall allow ENCROACHER to relocate the said portion in accordance with this Agreement.
- b. This Agreement may be terminated by CITY for failure, neglect, or refusal by ENCROACHER to fully and promptly comply with any and all of the conditions of this Agreement, or for nonuse in accordance with Section 6.6 herein, upon thirty (30) days written notice, unless ENCROACHER confirms with thirty (30) days of receipt of the notice that the cited condition has ceased, been corrected or, subject to CITY's agreement is diligently being pursued by ENCROACHER, which agreement shall not be unreasonably withheld.
- c. This Agreement may be terminated by CITY if ENCROACHER's Certificate of Public Convenience and Necessity terminates, is revoked, or is abandoned, upon ten (10) days written notice, unless ENCROACHER confirms within ten (10) days of receipt of the notice that the cited condition has ceased, been corrected or, subject to CITY's agreement is diligently being pursued by ENCROACHER, which agreement shall not be unreasonably withheld.

- d. ENCROACHER may, in its sole discretion, provide thirty (30) days' written notice to CITY that ENCROACHER elects to discontinue occupation of CITY Public Rights-of-Way and terminate the Agreement, subject to compliance with removal/abandonment requirements and other obligations that survive the termination of Agreement.

15.2 Upon termination of the Agreement, and upon written request by CITY, ENCROACHER, at its own cost and expense, agrees to remove, or at CITY's discretion, abandon in place some or all of its Network Facilities from the Public Right-of-Way and restore the Public Right-of-Way as set forth in the Removal and Relocation provisions of this Agreement. Should ENCROACHER in such event fail, neglect, or refuse to make such removals or restoration with one hundred eight (180) days of CITY's written request, at the sole option of CITY, such removal and restoration may be performed by CITY at the expense of ENCROACHER, which actual expense, including administrative and legal costs ENCROACHER agrees to pay CITY upon demand. If CITY allows ENCROACHER to abandon its Network Facilities in place, title to those Network Facilities shall pass to CITY and ENCROACHER shall, upon demand, promptly execute and deliver to CITY all documentation necessary to effectuate such transfer of ownership of the Network Facilities. Upon such transfer of ownership after abandonment and acceptance by CITY, ENCROACHER shall have no further obligations or liabilities under this Permit, with the exception of the repair obligations delineated in Section 9 above.

SECTION 16

HAZARDOUS MATERIALS USE

16.1 ENCROACHER covenants that it will not handle or transport Hazardous Materials on Network Facilities or the Public Right-of-Way. As used in this Agreement, the term "Hazardous Materials" means: (a) any substance, products, waste, or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 United States Code Section 9601 et seq.; the Resources Conservation and Recovery Act, 42 United States Code Section 6901 et seq.; the Hazardous Materials Transportation Conservation and Recovery Act, 42 United States Code Section 1801 et seq.; the Clean Water Act, 33 United States Code Section 1251 et seq.; the Toxic Substances Control Act, 15 United States Code Section 2601 et seq.; the California Hazardous Waste Control Act, Health and Safety Code Section 25100 et seq.; the Hazardous Substance Account Act, Health and Safety Code Section 25330 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Section 25249.5 et seq.; California Health and Safety Code Section 25280 et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Section 25170.1 et seq.; California Health and Safety Code Section 25501 et seq. (Hazardous Materials Release Response Plans and Inventory); or the California Porter-Cologne Water Quality Control Act, Water Code Section 13000 et seq., all as amended (the above cited California state statutes are hereinafter collectively referred to as "the State Toxic Substances Law"); or any other federal, state, or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, now or at any time hereinafter in effect; (b) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on

negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court; (c) petroleum or crude oil, other than petroleum and petroleum products which are contained within regularly operated motor vehicles; and (d) asbestos. In the event a Network Facility is now or in the future used in the handling or transporting of Hazardous Materials, ENCROACHER agrees fully to comply with all applicable federal, state, and local laws, rules, regulations, orders, decisions, and ordinances (hereinafter referred to as "Hazardous Materials Standards") concerning Hazardous Materials. Encroacher further agrees that at CITY's request it will furnish CITY with proof, satisfactory to CITY that ENCROACHER is in such compliance.

16.2 Notwithstanding anything else contained in this Agreement and to the extent permitted by law, in case of a breach of the obligations contained in this Section, ENCROACHER agrees to assume liability for and to save and hold harmless CITY from and against any and all injuries to any person, including wrongful death, and damage to property, including without limitation, property of CITY and ENCROACHER, and all related expenses, including without limitation reasonable attorneys' fees, investigators' fees, litigation expenses, and mitigation costs resulting in whole or in part from ENCROACHER's failure to comply with any Hazardous Materials Standards issued by any governmental authority concerning Hazardous Materials. ENCROACHER, at its cost, shall assume the defense of all claims, in accordance with Section 12 hereof. ENCROACHER agrees to reimburse CITY for all reasonable costs of any kind incurred as a result of the ENCROACHER's failure to comply with this Section, including, but not limited to, judicial or administrative fines, penalties, clean-up and disposal costs, and reasonable legal costs incurred as a result of ENCROACHER's handling, transporting, or disposing of Hazardous Materials on, over, or across any Network Facilities and Public Right-of-Way.

SECTION 17 **NOTICES**

17.1 ENCROACHER's Network Operations Center shall be available to CITY staff 24 hours a day, 7 days a week, regarding problems or complaints resulting from the facilities installed pursuant to this Agreement and may be contacted by telephone at 877-353-1695 regarding such problems or complaints. ENCROACHER shall promptly respond to such call(s) and perform the required repair or correct any adverse impact to CITY's use or operations or the use or operations of a third party caused by ENCROACHER's Network Facilities in the Public Right(s)-of-Way at no cost to CITY, except as otherwise set forth in this Agreement.

17.2 All notices given or which may be given pursuant to this Agreement shall be in writing and transmitted by United States mail or by private delivery systems if followed by United States mail or by private delivery systems as follows:

To CITY at:

City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035-5411
Attn: Engineering Director/City Engineer

To ENCROACHER at:

Mobilitie , LLC
660 Newport Center Drive, Suite 200
Newport Beach, CA 92660
ATTN: Asset Management

With a copy to:

Mobilitie , LLC
660 Newport Center Drive, Suite 200
Newport Beach, CA 92660
ATTN: Legal Department

SECTION 18 **MISCELLANEOUS**

18.1 This Agreement contains the entire understanding between the Parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the Parties relating to the subject matter of this Agreement which are not fully expressed herein. This Agreement may be not amended except pursuant to a written instruction signed by all Parties. ENCROACHER and CITY agree to renegotiate this Agreement in good faith if required for CITY to comply with 47 U.S.C. 253, or any similar provision of state law. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement is invalid or unenforceable, the remainder of this Agreement shall not be affected by such invalidity or unenforceability.

18.2 The failure of either Party hereto to enforce any of the provisions of this Agreement, or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall nevertheless be and remain in full force and effect.

18.3 Payments. If any payment due to CITY under this Agreement is not timely made, CITY may assess interest at a rate of ten percent (10%) per annum from the payment due date up until payment is made. In the event payment is not made within ninety (90) days of its due date, ENCROACHER shall be considered to have materially breached this Agreement. CITY's exercise of its rights hereof shall not release ENCROACHER from any liability or obligation hereunder, whether of indemnity or otherwise.

18.4 Consent to Jurisdiction and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any

way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of Santa Clara County, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, ENCROACHER expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

18.5 This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

(signatures on next page)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate.

Item # C8.

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:

Steven Erickson, Engineering Director/City Engineer

MOBILITIE, LLC,
a Nevada limited liability company

By: Chris
Glass

Its: General
Counsel



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve and Authorize the City Manager to Execute a Sole Source One-Year Agreement with CentralSquare Inc. for Maintenance and Support of the Public Safety Computer Aided Dispatch System for the not-to-exceed amount of \$129,264.92 (Staff Contact: Daniel Nam, Director of Information Technology, 408-586-2712)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	9/20/2022
	<u>Recommendation:</u> Approve and authorize the City Manager to execute a sole source one-year agreement with CentralSquare Inc. for maintenance and support of the Public Safety Computer Aided Dispatch System for the not-to-exceed amount of \$129,264.92, pending final approval by City Attorney.

BACKGROUND:

City and Tritech Software Systems, Inc. entered into an agreement on October 21, 2003. Staff competitively evaluated different software packages for Computer Added Dispatching (CAD) software from a variety of different companies. Tritech Software Systems was determined to have the best price and service and has been the backbone of both the Police and Fire Main computerized dispatch systems since 2003. On July 24, 2018, TriTech was acquired by CentralSquare Inc. and the City has continued to rely on CentralSquare for the maintenance and support of the CAD software. The system is proprietary and only CentralSquare can provide the necessary annual software maintenance services to the system. The current software maintenance term expired on September 9, 2022. The software maintenance renewal is subject to annual agreement between the parties.

ANALYSIS:

Due to the extensive nature of such a large-scale implementation of a computer aided dispatch system, migration to a new CAD would be disruptive to both the Fire and Police Departments and not in the best interest of public safety. As such, staff believes continuing service with CentralSquare is in the best interest of the City. On December 23, 2020, the City's Purchasing Agent redesignated CentralSquare Inc. as the "Sole Source" provider of the TriTech CAD system and its maintenance in accordance with Municipal Code Section 1-2-3.06 "Sole Source Procurement." This designation is active for five (5) years ending on December 22, 2025.

Central Square has submitted Invoice #360923 in the amount of \$129,264.92. Previously, the City did not have an agreement and instead, directly paid the invoice or used a standard purchase order (P.O.) template with terms and conditions for services. The City is continually evaluating its contracts and as this is a critical function and maintenance service, the City wishes to formalize this service with terms and conditions within a formal agreement. Staff requests Council authorization for the invoice amount of \$129,264.92 to demonstrate the City's intent with the vendor as Staff continues to finalize an agreement with mutually acceptable terms and conditions.

POLICY ALTERNATIVE(S):

Alternative 1: Do not authorize the City Manager to execute the Sole Source agreement with CentralSquare until the agreement is finalized.

Pros: This would ensure the agreement is presented for Council review before authorization.

Cons: The vendor may decide to terminate the maintenance support for the Police CAD system as they have already submitted an invoice which remains unpaid. Terminating maintenance support would have an impact on the City's public safety.

Reason for Not Recommending: Authorizing the City Manager to execute this sole source agreement would allow Staff to continue efforts to negotiate a timely agreement and ensure a fully functioning CAD systems, which is vital to delivery of police and fire services.

FISCAL IMPACT:

Funding for year one of this agreement is currently available in the existing Information Technology department operational budget. The maintenance cost of the City's CAD system would be \$129,264.92.

California Environmental Quality Act (CEQA):

Not applicable.

RECOMMENDATION:

Adopt a Resolution Authorizing the City Manager to Execute a Sole Source Annual Renewal Purchase Order with CentralSquare Inc. for Maintenance and Support of the Public Safety Computer Aided Dispatch System, pending negotiations and approval of the City Attorney.

Attachment(s):

1. Purchase Order with CentralSquare Inc.
2. Sole Source Request Form



Tritech Software Systems, a CentralSquare Company
1000 Business Center Drive
Lake Mary, FL 32746

Billing Inquiries: Accounts.Receivable@centralsquare.com

Invoice

Item # C9.

Invoice No (1 of 1)
360923

Date
8/8/2022

Page
1 of 4

Bill To
Milpitas, CA
Daniel Nam
1265 North Milpitas Boulevard
Milpitas CA 95035
United States

Ship To
Milpitas, CA
Daniel Nam
1265 North Milpitas Boulevard
Milpitas CA 95035
United States

Customer No	Customer Name	Customer PO #	Currency	Terms	Due Date
12635	Milpitas, CA		USD	Net 30	9/7/2022

Description	Units	Rate	Extended
Contract No. Q-106598			
1 Escrow Fee - Annual Subscription Fee Maintenance: Start:9/1/2022, End: 8/31/2023	1	\$950.00	\$950.00
2 Inform Mobile Mapping Annual Maintenance Fee - Annual Maintenance Fee Mobile Mapping Support Fees Maintenance: Start:9/1/2022, End: 8/31/2023	51	\$28.26	\$1,441.26
3 Inform CAD Position Annual Maintenance Fee - Annual Maintenance Fee VisiCAD Command Public Safety Full-User License*** Maintenance: Start:9/1/2022, End: 8/31/2023	6	\$3,365.11	\$20,190.66
4 Inform CAD Quickest Path Module Annual Maintenance Fee - Annual Maintenance Fee VisiCAD Live Routing License Maintenance: Start:9/1/2022, End: 8/31/2023	1	\$4,206.39	\$4,206.39
5 Inform CAD The GISLink Utility Position Annual Maintenance F - Annual Maintenance Fee GISLink / VisiCAD MapImport Utility Maintenance: Start:9/1/2022, End: 8/31/2023	2	\$2,804.27	\$5,608.54
6 Inform CAD Position Annual Maintenance Fee - Annual Maintenance Fee VisiCAD MultiAgency Maintenance: Start:9/1/2022, End: 8/31/2023	1	\$1,402.13	\$1,402.13
7 Inform CAD Position Annual Maintenance Fee - Annual Maintenance Fee VisiCAD Multiassign Maintenance: Start:9/1/2022, End: 8/31/2023	1	\$2,103.19	\$2,103.19
8 Event Playback (GIS Playback) Module Annual Maintenance Fee - Annual Maintenance Fee VisiCAD Playback Maintenance: Start:9/1/2022, End: 8/31/2023	1	\$1,402.13	\$1,402.13



Tritech Software Systems, a CentralSquare Company
1000 Business Center Drive
Lake Mary, FL 32746

Billing Inquiries: Accounts.Receivable@centralsquare.com

Invoice

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2 of 4

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Customer No	Customer Name	Customer PO #	Currency	Terms	Due Date
12635	Milpitas, CA		USD	Net 30	9/7/2022

	Description	Units	Rate	Extended
9	CentralSquare Message Switch Annual Maintenance Fee - Annual Maintenance Fee VisiCAD Query Message Switch Maintenance: Start:9/1/2022, End: 8/31/2023	1	\$1,402.13	\$1,402.13
10	Inform CAD the Archive Server Software Annual Maintenance Fe - Annual Maintenance Fee VisiCAD Archive License Data Purging & SQL Replication Maintenance: Start:9/1/2022, End: 8/31/2023	1	\$5,608.52	\$5,608.52
11	Inform CAD Rotation Provider Annual Maintenance Fee - Annual Maintenance Fee VisiCAD Rotation Maintenance: Start:9/1/2022, End: 8/31/2023	1	\$140.21	\$140.21
12	Inform CAD Test or Training System Annual Maintenance Fee - Annual Maintenance Fee VisiCAD Training/Test Server Maintenance: Start:9/1/2022, End: 8/31/2023	1	\$2,805.54	\$2,805.54
13	Standard Alpha Numeric Paging Interface Annual Maintenance F - Annual Maintenance Fee Standard Alpha-Numeric Paging Interface License Maintenance: Start:9/1/2022, End: 8/31/2023	1	\$2,523.82	\$2,523.82
14	Inform Mobile Base Position Annual Maintenance Fee - Annual Maintenance Fee VisiNet Mobile Applications Server License Maintenance: Start:9/1/2022, End: 8/31/2023	1	\$14,021.28	\$14,021.28
15	Inform Mobile Base Position Annual Maintenance Fee - Annual Maintenance Fee VisiNet mobile Client License*** Maintenance: Start:9/1/2022, End: 8/31/2023	50	\$193.48	\$9,674.00
16	Inform Mobile Mapping Annual Maintenance Fee - Annual Maintenance Fee VisiNet Mobile Mapping Client License Maintenance: Start:9/1/2022, End: 8/31/2023	50	\$84.14	\$4,207.00



Invoice

Item # C9.

Invoice No (1 of 1)
360923

Date
8/8/2022

Page
3 of 4

Tritech Software Systems, a CentralSquare Company
1000 Business Center Drive
Lake Mary, FL 32746

Billing Inquiries: Accounts.Receivable@centralsquare.com

Bill To
Milpitas, CA
Daniel Nam
1265 North Milpitas Boulevard
Milpitas CA 95035
United States

Ship To
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Milpitas CA 95035
United States

Customer No	Customer Name	Customer PO #	Currency	Terms	Due Date
12635	Milpitas, CA		USD	Net 30	9/7/2022

	Description	Units	Rate	Extended
17	Standard Station Alert Interface Annual Maintenance Fee - Annual Maintenance Fee Locution Station Alert/Printer Interface License (Centralized) Maintenance: Start:9/1/2022, End: 8/31/2023	1	\$8,412.76	\$8,412.76
18	NCIC/State Message Switch Software - Inform CAD/Inform Mobil - Annual Maintenance Fee Interfaces to CLETS/SLETS/NCIC Maintenance: Start:9/1/2022, End: 8/31/2023	1	\$4,206.39	\$4,206.39
19	Standard ANI/ALI Interface Annual Maintenance Fee - Annual Maintenance Fee Standard E-9-1-1 With TDD Interface License Maintenance: Start:9/1/2022, End: 8/31/2023	1	\$5,608.52	\$5,608.52
20	Message Switch Manager Annual Maintenance Fee - Annual Maintenance Fee Message Switch Manager Maintenance: Start:9/1/2022, End: 8/31/2023	1	\$1,402.13	\$1,402.13
21	Inform CAD Integrated Solution Annual Maintenance Fee - Annual Maintenance Fee Aether Fire RMS Closed-Record Download License w/ Personnel and Roster Integration Maintenance: Start:9/1/2022, End: 8/31/2023	1	\$8,412.76	\$8,412.76
22	Std Inform CAD to Inform CAD Basic Interface (single side) A - Annual Maintenance Fee Standard VisiCAD to CAD Interface License Maintenance: Start:9/1/2022, End: 8/31/2023	1	\$7,140.78	\$7,140.78
23	Inform CAD Position Annual Maintenance Fee - Annual Maintenance Fee VisiCAD Command Public Safety Database Server License Maintenance: Start:9/1/2022, End: 8/31/2023	1	\$8,412.76	\$8,412.76
24	Inform CAD Position Annual Maintenance Fee - Annual Maintenance Fee VisiCAD BOLO License Maintenance: Start:9/1/2022, End: 8/31/2023	1	\$1,402.13	\$1,402.13



Tritech Software Systems, a CentralSquare Company
1000 Business Center Drive
Lake Mary, FL 32746

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Invoice

Item # C9.

Invoice No (1 of 1)

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Date

8/8/2022

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4 of 4

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United States

Customer No	Customer Name	Customer PO #	Currency	Terms	Due Date
12635	Milpitas, CA		USD	Net 30	9/7/2022

	Description	Units	Rate	Extended
25	Inform CAD Mapping Annual Maintenance Fee - Annual Maintenance Fee CAD Mapping Support Fees Maintenance: Start:9/1/2022, End: 8/31/2023	10	\$17.64	\$176.40
26	Inform CAD Position Annual Maintenance Fee - Annual Maintenance Fee VisiCAD R-Check Maintenance: Start:9/1/2022, End: 8/31/2023	1	\$1,402.13	\$1,402.13
27	Inform CAD Mapping Test or Training Annual Maintenance Fee - Annual Maintenance Fee Inform CAD Mapping Test or Training Maintenance: Start:9/1/2022, End: 8/31/2023	4	\$126.42	\$505.68
28	TomTom Street GIS Data (Enterprise Mobile On-Prem) Annual Subscription Fee - Annual Subscription Fee Maintenance: Start:9/1/2022, End: 8/31/2023	56	\$52.74	\$2,953.44
29	TomTom Street GIS Data (Enterprise CAD/RMS On-Prem) Annual Subscription Fee - Annual Subscription Fee Maintenance: Start:9/1/2022, End: 8/31/2023	56	\$27.54	\$1,542.24

Please include invoice number(s) on your remittance advice,
made payable to Tritech Software Systems

ACH:

Routing Number 121000358
Account Number 1416612641
E-mail payment details to: Accounts.Receivable@CentralSquare.com

Check:

12709 Collection Center Drive
Chicago, IL 60693

Subtotal \$129,264.92

Tax \$0.00

Invoice Total \$129,264.92

Payments Applied \$0.00

Balance Due \$129,264.92



CITY OF MILPITAS SOLE SOURCE REQUEST

THIS FORM MUST BE COMPLETED AND APPROVED PRIOR TO ANY PROCUREMENT

When a request is made for a non-competitive procurement and the specification limits the bidding to one source and/or one brand or trade name, the requesting department must complete the following. Please answer in the space provided, or in an attachment address by specific reference, each question listed below (1-5) in your justification. **Be sure to answer each part of each question. Failure to respond fully to any of the questions could result in delay or rejection of your request due to inadequate justification.**

- Using appropriate detail, including brand name and model number, briefly describe the product you wish to procure. In the case of a service use enough detail to clearly describe to someone not familiar with the process what you are procuring.

IT is requesting a sole source procurement to purchase 'Upgrade/re-host' services from CentralSquare. This migration of the current 9-1-1 Computer-Aided-Dispatch(CAD) system is a required step to stay within the recommended maintenance cycle, and to replace the aging existing hardware.

- Please check one:

Cost: \$ \$27,900.00

- ☒ **SOLE SOURCE:** Item is available from one source only.
If it is your assertion that the manufacturer or distributor is the only authorized source in the Bay Area, Northern California; or whatever the claim is; please substantiate that with a letter from the manufacturer or distributor. The letter must be on their stationary but can be sent via email. Attach a copy to this form.
- ☐ **STANDARDIZATION REQUEST:** The Department requires the item to standardize parts, design, quality etc. **(This requires further discussion with the Purchasing Agent.)**

- 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?)

CentralSquare is the sole provider for re-hosting(migrating) the current system to the new hardware platform. CentralSquare is also the manufacturer, and a sole provider that have the knowledge of the existing 9-1-1 CAD system.

- 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, and telephone number of the company representative who's product you tested.)**

This upgrade/migration service requires highly specific knowledge and skills related to the CentralSquare Inform 9-1-1 CAD system. This service is provided solely by the manufacturer.

5. If justification is based on matching and/or intermixing with existing equipment (refer to 2.c.), list the quantity, manufacturer, brand, and model of the existing equipment, and why the matching is required not simply preferred.

I HEREBY CERTIFY THAT:

1. I am an approved department representative and am aware of the City's requirements for competitive bidding, as well as the criteria for justification for sole source 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 procurement and meeting the City's criteria.
4. A sole source procurement in this case would withstand a possible audit or a vendor's protest.

DocuSigned by:
REQUESTOR: Daniel Nam, Information Technology Manager DATE: Dec-18-2020
DocuSigned by:
DEPT./DIV. HEAD: Mike Luu DATE: Dec-23-2020
28201CBFCF39407...

PURCHASING DIVISION USE ONLY:

APPROVED Yes No

PURCHASING AGENT: Chris Schroeder DATE: Dec-23-2020
14A9237025FA441...
DocuSigned by:
RISK MANAGER/
DIRECTOR OF FINANCE: [Signature] DATE: Dec-23-2020
D9F94EEB50844F3...

COMMENTS:

SOLE SOURCE 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, the lack of effective communication between the Buyer and the requesting department can lead to lost time in completing the acquisition of a product or service.

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 requisitions through Purchasing, you are directed to review the Sole Source Request form herein. If you feel your request meets the criteria, follow the instructions in filling out the form and attach it to your requisition. If the sole source justification is accepted by Purchasing, the requisition can be expedited without the normal bidding 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 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 your requisitioning efforts more efficient under sole source conditions.

It will also remain our responsibility to advise you when a particular competitive review process may both serve the City better and/or be required by the City's governing ordinance.

In order for Purchasing to accept a request for sole source/sole brand, the certification form referenced herein, must be made a part of your justification and be signed by authorized department representative(s). The form will remain on file for audit purposes.

B. PROCEDURE

Sole source procurements are an exception to the normal procurement function and require a detailed justification. In processing sole source requests for supplies, services and/or equipment, Purchasing adheres to and is governed by the principles set forth in City of Milpitas Municipal Code Section I-2-3.09 Sole Source Procurement as approved by the City Council.

If you are requesting a particular vendor, brand or product, you must make this fact clear on your requisition. Your request will then be restrictive and non-competitive and will fall into a sole source category.

Such a request should not be made unless you are confident that your request is reasonable and appropriately justified to meet the City's requirements and withstand any possible audit. The City's requirements and the format for submitting such requests are contained herein. Please make copies of the Sole Source Request form for your future use.

The following factors **DO NOT** apply to sole source requests and should not be included in your sole source justification. They will not be considered and only tend to confuse the evaluation process.

1. Personal preference for product or vendor.
2. Cost, vendor performance, and 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 3 from the Sole Source Request form). In other words, don't say you want a tree trimmer so you can trim trees, instead explain why this particular trimmer with these exact performance specifications is the only one that will meet your need.
5. A request for "no substitution" submitted without justification. This is just a sole source request without justification.



CENTRAL SQUARE

Item # C9.

CentralSquare Technologies, LLC
1000 Business Center Drive
Lake Mary, FL 32746

December 11, 2020

Milpitas Police Department
1265 North Milpitas
Milpitas, CA 95035

To Whom It May Concern:

This letter is in response to Milpitas Police Department's request for a sole source letter from our company. This letter is to confirm that CentralSquare Enterprise Rehost Services are a sole source product, manufactured, sold, serviced, and distributed exclusively by CentralSquare Technologies, LLC (CentralSquare). This product must be purchased directly by institutions from CentralSquare at the address listed above. There are no agents or dealers authorized to resell this product. CentralSquare Enterprise Rehost Services are sold only as a direct transaction between CentralSquare and end Clients.

Sincerely,

DocuSigned by:

Brian Pagels

D14DB36518AA405...

Brian Pagels

Vice President of Sales, Public Safety & Justice
CentralSquare Technologies



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Authorize and Approve Travel to Anaheim, CA for City Manager Steve McHarris to Attend the Annual Conference of the American Planning Association – California Chapter – to be held October 1 – 4, 2022. (Staff contact: Ashwini Kantak, Assistant City Manager, 408-586-3053)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	9/20/2022
	<u>Recommendation:</u> Authorize and approve travel to Anaheim, CA for City Manager Steve McHarris to attend the Annual Conference of the American Planning Association – California Chapter – to be held October 1 – 4, 2022, for an estimated not-to-exceed amount of \$2,500 budgeted under Conferences/Trainings allocation for the City Manager's Office.

BACKGROUND:

The American Planning Association (APA) – California Chapter – annual conference offers attendees an abundance of education, innovative ideas, information-sharing, and practical strategies for managing local government in today's complex American Planning world while also providing countless opportunities for professional and personal growth and networking. This year's conference will be in Anaheim, CA from October 1 – 4, 2022, and with "Celebrating CommUNITY" as its theme, recognizing the hard-won victories and achievements in planning that required collaboration, cooperation, and creative problem solving to navigate the last few years.

ANALYSIS:

The City of Milpitas Travel and Expense Policy requires approval of travel for elected officials and the City Manager by the City Council. Council approval of this request will allow City Manager McHarris to travel to Anaheim, CA to represent the City and to maintain his Professional Planning certification, consistent with his employment agreement. Attendance at the conference will also offer the City Manager the opportunity to garner additional knowledge from other city and county administrators and to share knowledge with the City organization.

The total conference registration fee is \$625.00 per attendee. Additional costs will include accommodations for a three-night hotel stay which is estimated at \$570.00 (excluding hotel taxes/fees); meals estimated at \$100.00; air travel fee is \$157.96; ground transportation, and any other related conference costs. The total estimated cost for the City Manager to attend the conference is approximately \$2,500.00 and will be covered by budgeted amounts in the FY 2022-23 Adopted Budget.

POLICY ALTERNATIVE(S):

Not applicable

FISCAL IMPACT:

The estimated expenses for the conference in Anaheim, CA are \$2,500.00 (registration, transportation, and hotel). Sufficient funds are available in the City Manager's Office allocation of \$15,000 for the Conferences / Trainings budget to pay for the requested travel expenses. As of September 13, 2022, the balance in account 4503 for training and registration is about \$13,000.

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:

Authorize and approve travel to Anaheim, CA for City Manager Steve McHarris to attend the Annual Conference of the American Planning Association – California Chapter – to be held October 1 – 4, 2022, for an estimated not-to-exceed amount of \$2,500 budgeted under Conferences/Trainings allocation for the City Manager's Office.

Attachment(s):

Attachment 1: 2022 American Planning Association – California Chapter – Annual Conference Schedule



APA CALIFORNIA CONFERENCE

CONFERENCE-AT-A-GLANCE

Saturday, October 1

Item # C10.

The Conference-at-a-Glance is subject to change.

The most current information can be found on the [conference website](#), on the mobile app prior to the conference, and in the registration area when the conference begins.



Members can earn certification credits for many activities at the conference. A notation has been made next to each creditable session/event indicating the number of pending certification credits.

8:00 am - 6:00 pm	Registration		Platinum Foyer
9:00 am - 1:00 pm	Headshots		Elite Ballroom 3
10:00 am - 5:00 pm	Exhibitor Set Up		Marquis Ballroom Center/South
11:00 am - 12:00 pm	Planners4Health Opening Plenary: Trauma Informed Planning and Design	CM 1.0	Orange County Ballroom 1/2
12:00 pm - 1:00 pm	California Planning Foundation Awards Luncheon (students only)		Grand Ballroom A/D
1:00 pm - 2:15 pm	Meet the Candidates! APA California Chapter Board Elections 2022		Marquis Ballroom NE
1:00 pm - 2:30 pm	LA County Green Zones Program: Environmental Justice and Healthier Communities	CM 1.0 EQUITY	Grand Ballroom G/K
	Class is in Session: A 101 Introductory Workshop to SB 1000	CM 1.5	Platinum 7/8
	Getting the Job: The Resume		Platinum 3/4
	Planners4Health in Action: Reaffirming Our Roll in the CommUNITY	CM 1.5 EQUITY	Platinum 9/10
	What Students Want to Know! (CPF Session)		Platinum 1/2
2:45 pm - 3:45 pm	An Equity and Parks Success Story: Park Renewal and Reinvestment in Fresno	CM 1.0 EQUITY	Platinum 3/4
	Environmental Justice Planning, Policy, and Organizing in California	CM 1.0 EQUITY	Platinum 9/10
	Community Health Matters	CM 1.5 EQUITY	Platinum 7/8
	Future Leadership Now	CM 1.0	Platinum 1/2
	Getting Teens to the Table: Partnerships for Youth Engagement	CM 1.0	Grand Ballroom G/K
	What's Next? A Discussion of Careers in Planning for Student and Young/Emerging Planners		Grand Ballroom A/D
4:00 pm - 5:30 pm	MW#1: OC Streetcar Guided Tour Additional \$15 fee applies. Limited to students, YEP and TPD members only.	CM 1.0	Meet outside the Marriott Lobby at 3:45 pm
4:30 pm - 6:30 pm	APA California Diversity Summit The Disturbing Legacy of California's Sundown Towns	CM 2.0 EQUITY	Platinum 5/6
6:00 pm - 8:00 pm	Joint Students, YEP and Transportation Planning Division Mixer		Pizza Press, 117 W. 4th St., Santa Ana
7:00 pm - 9:00 pm	Planning Leadership Academy Reception (by invitation only)		Platinum Patio

CONFERENCE-AT-A-GLANCE

Sunday, October 2

7:00 am - 8:00 am	Continental Breakfast		Marquis Ballroom
7:00 am - 6:00 pm	Registration		Platinum Foyer
8:00 am - 6:00 pm	Exhibits Open		Marquis Ballroom Center/South
8:00 am - 9:30 am	Opening Keynote: Bringing the Magic to Life with Walt Disney Imagineering Travis Finstein, Assistant Producer, Creative Writing and Production Stephanie Murray, Master Planner Principal: Design + Planning	CM 0.5	Platinum 5/6
9:00 am - 12:00 pm	MW#2: The Future of OC Parks - Mile Square Regional Park Additional \$30 fee applies.	CM 3.0	Meet outside the Marriott Lobby at 8:45 am

Mobile Workshops
Student Sessions/Events
Special Events
Planners4Health Mini-Conference



APA CALIFORNIA CONFERENCE

CONFERENCE-AT-A-GLANCE

Sunday, October 2

Item # C10.

The Conference-at-a-Glance is subject to change.
The most current information can be found on the [conference website](#), on the mobile app prior to the conference, and in the registration area when the conference begins.

9:45 am - 10:15 am	Applying an Equity Lens to Hazard Mitigation Planning	CM 0.5	Platinum 9/10
	Are Connected Vehicles The Next Big Thing in Big Data?	CM 0.5	Orange County Ballroom 1/2
	Bikeways and the Virtuous Cycle	CM 0.5	Platinum 1/2
	Cottage Housing-Another Missing Middle Option for Small and Medium Sized Cities	CM 0.5	Grand Ballroom A/D
	Getting to the Root of It – Planning for Trees to Create Resilient Communities	CM 0.5	Grand Ballroom G/K
	Poking at COVID Travel Data Like a Lab Rat to Produce Better Models	CM 0.5	Platinum 3/4
	Suburban Reinvention: Imagining the 15-Minute City in California	CM 0.5	Platinum 7/8
	Success Begins With the RFP	CM 0.5	Orange County Ballroom 3/4
Virtual Option	Talk Less, Draw More!	CM 0.5	Platinum 5/6
10:00 am - 2:00 pm	MW#3: Renaissance of a Community through Placemaking and Permanent Supportive Housing. Additional \$40 fee applies. Meet outside the Marriott Lobby at 9:45 am		
10:30 am - 11:30 am	Accelerating Sustainability with LEED for Cities	CM 1.0 S/R	Platinum 7/8
	Planning with Purpose (Ethics Keynote)	CM 1.0 ETHICS	Platinum 5/6
	Decoding the Vertiport: Ground Planning for Urban Air Mobility	CM 1.0	Platinum 3/4
	Housing Element Boot Camp	CM 1.0	Platinum 1/2
	Implementing a Community-Driven Equity Program: Lessons Learned from the US 101 Express Lanes	CM 1.0 EQUITY	Orange County Ballroom 1/2
	Norwalk Transit Village: Creating a Successful Public-Private Partnership	CM 1.0	Orange County Ballroom 3/4
	The Unrealized Potential of Housing Element Annual Progress Reports	CM 1.0	Grand Ballroom A/D
	Tools and Tactics for Tricky Twists in Community Outreach	CM 1.0	Grand Ballroom G/K
	Warehouse A-Ware-Ness: Planning for and Processing Warehouse Developments	CM 1.0	Platinum 9/10
	Passing the AICP Exam: Who Wants to be a Certified Planner?		Elite Ballroom/ Collaboration Room
12:00 pm - 1:00 pm	Planning Commissioners Luncheon		Grand Ballroom A/D
12:00 pm - 2:00 pm	California Planning Roundtable Meeting (CPR)		Gold Key I/II
1:15 pm - 2:45 pm	A Deep Dive into Defensible Mitigation	CM 1.5 LAW	Platinum 3/4
	Plan for Recovery: Be Prepared When Disaster Strikes	CM 1.5 S/R	Platinum 1/2
	Got RHNA. Now What?	CM 1.5	Platinum 7/8
	Lessons from the Planning and Development of Irvine Ranch, 1937-1977	CM 1.5	Orange County Ballroom 3/4
	New Paradigms in Community Engagement: Virtual Ground Truthing and Equitable Partnerships	CM 1.5 EQUITY	Platinum 9/10
	Planning for Management: Leadership Lessons from a Former Disney CEO	CM 1.5	Grand Ballroom G/K
	Reading the Landscape: New Books on Planning & Cities	CM 1.5	Orange County Ballroom 1/2
	SB 743 in Practice: Let's Play High, Low, Buffalo	CM 1.5	Platinum 5/6
1:15 pm - 4:45 pm	Video Production for Planners	CM 3.5	Grand Ballroom A/D

S/R - Sustainability/Resilience



Mobile Workshops



Student Sessions/Events



Special Events



APA CALIFORNIA CONFERENCE

CONFERENCE-AT-A-GLANCE

Sunday, October 2

Item # C10.

The Conference-at-a-Glance is subject to change.
The most current information can be found on the [conference website](#), on the
mobile app prior to the conference, and in the registration area when the conference begins.

1:30 pm - 4:30 pm	MW#4: ROASTED: Come Discover the Best Coffee Experiences CM 4.0 <i>Meet outside the Marriott Lobby at 1:15 pm</i> <i>in Garden Grove. Additional \$40 fee applies.</i>
3:15 pm - 4:45 pm	Balancing Congestion Relief and Induced VMT CM 1.5 <i>Orange County Ballroom 3/4</i>
Virtual Option	2022 Legislative Update CM 1.5 LAW <i>Platinum 5/6</i>
	An Outsider's View on Urban Mobility Futures in Greater Los Angeles CM 1.5 <i>Orange County Ballroom 1/2</i>
	APA California Sections Speak on Housing: Report and Findings from the California Planning Roundtable CM 1.5 <i>Platinum 7/8</i>
	Centering Community: Embedding Equity in Planning and Land-Use Development CM 1.5 EQUITY <i>Grand Ballroom G/K</i>
	Exurban Shift: Community Outmigration in the New Normal CM 1.5 <i>Platinum 9/10</i>
	A Murder Mystery Party: Who Killed the Low-Income Housing Proposal CM 1.5 <i>Platinum 1/2</i>
	Tackling the Housing Crisis: Repurposing Aging Commercial Centers into Mixed-Use Villages CM 1.5 <i>Platinum 3/4</i>
3:30 pm - 6:00 pm	MW#5: Anaheim Foodie and Brew Tour CM 2.0 <i>Meet outside the Marriott Lobby at 3:15 pm</i> <i>Additional \$40 fee applies.</i>
6:30 pm - 9:30 pm	Opening Reception: Magic at the MUZEO Museum and Cultural Center <i>Buses will begin service at 5:45 pm outside the Marriott Lobby</i>

CONFERENCE-AT-A-GLANCE

Monday, October 3

7:00 am - 6:00 pm	Registration <i>Platinum Foyer</i>
8:00 am - 9:00 am	Continental Breakfast <i>Marquis Ballroom</i>
8:00 am - 6:00 pm	Exhibits Open <i>Marquis Ballroom Center/South</i>
8:30 am - 9:30 am	Climate Resilience: A Partnership Among the City of Anaheim, County of Los Angeles and SoCalGas CM 1.0 S/R <i>Platinum 1/2</i>
Virtual Option	Developing and Implementing Public Policy for Regulated Cannabis - Where Do We Go From Here? CM 1.0 <i>Orange County Ballroom 3/4</i>
	Housing Regulations Trivia Game! CM 1.0 LAW <i>Platinum 7/8</i>
	Leveraging Innovation Districts to Support Inclusive and Equitable Economic Development CM 1.0 EQUITY <i>Platinum 3/4</i>
	Planning with Compassion. Overcoming Hurdles for Emergency Homeless Housing CM 1.0 <i>Platinum 9/10</i>
	Transitioning to Objective; Avoiding Objectionable CM 1.0 <i>Grand Ballroom A/D</i>
	Women in Planning: Working for Change CM 1.0 EQUITY <i>Orange County Ballroom 1/2</i>
8:30 am - 10:45 am	Dream, Play, Build: Workshop CM 2.25 <i>Grand Ballroom G/K</i>
9:00 am - 1:00 pm	MW#6: TOD, Adaptive Reuse, and Real Infill Finally Come to OC CM 4.0 <i>Meet outside the Marriott Lobby at 8:45 am</i> <i>Additional \$40 fee applies.</i>
9:45 am - 10:45 am	Beyond City Boundaries: A Regional Approach to Accelerating Housing Production CM 1.0 <i>Platinum 1/2</i>
	Connecting Paradise CM 1.0 EQUITY <i>Grand Ballroom A/D</i>
	Driving Success: Developing and Implementing VMT Mitigation Programs CM 1.0 <i>Orange County Ballroom 1/2</i>

S/R - Sustainability/Resilience



Mobile Workshops



Student Sessions/Events



Special Events



APA CALIFORNIA CONFERENCE

CONFERENCE-AT-A-GLANCE

Monday, October 3

Item # C10.

The Conference-at-a-Glance is subject to change.
The most current information can be found on the [conference website](#), on the mobile app prior to the conference, and in the registration area when the conference begins.

9:45 am - 10:45 am Virtual Option	Incentive-Based Commute Program for Essential Transit Workers	CM 1.0	Platinum 9/10
	Learning Early Planning Activities from CA Indigenous Populations	CM 1.0	Platinum 7/8
	Other To Residential: A Step-By-Step Guide to Converting Underutilized Non-Residential Land To Homes	CM 1.0	Platinum 3/4
	Water Equity and Resiliency in Tribal Communities and Underrepresented Communities	CM 1.0	Orange County Ballroom 3/4
10:00 am - 2:00 pm	MW#7: Road to Summer Additional \$40 fee applies.	CM 4.0	Meet outside the Marriott Lobby at 9:45 am
10:00 am - 2:30 pm	MW#8: Bring on the Goats/Fuel Mod Additional \$115 fee applies.	CM 4.0	Meet outside the Marriott Lobby at 9:45 am
11:00 am - 12:00 pm Virtual Option	Planner Emeritus Networking Meeting (PEN)	CM 1.0	Gold Key I/II
	Become a PRO – Workshop on PROhousing Designation and 6th Cycle Housing Element PROgram Ideas	CM 1.0	Grand Ballroom A/D
	Survey Says! Combine Your Resources	CM 1.0	Grand Ballroom G/K
	Innovative Mobility Strategies for Building Equitable Communities	CM 1.0 EQUITY	Orange County Ballroom 1/2
	Embracing and Implementing AB 686 Affirmatively Furthering Fair Housing	CM 1.0	Orange County Ballroom 3/4
	Inclusive Planning for Racially Complex Ethnic Enclaves	CM 1.0 EQUITY	Platinum 1/2
	Just Transition: Navigating a Complex Path Toward a More Sustainable Economy	CM 1.0 S/R	Platinum 3/4
	Walt Disney's Great Big Beautiful Tomorrows	CM 1.0	Platinum 7/8
	Bridge the Digital Divide in Your Community/Region	CM 1.0 EQUITY	Platinum 9/10
	Networking Luncheon		Platinum 5/6
1:00 pm - 5:00 pm	MW#9: Old Town Orange Additional \$50 fee applies.	CM 4.0	Meet outside the Marriott Lobby at 12:45 pm
1:00 pm - 5:30 pm	MW#10: Who Needs Parking: How Laguna Beach Re-Purposed Its Downtown Parking For Outdoor Activities and Dining During the Pandemic. Additional \$40 fee applies.	CM 4.0	Meet outside the Marriott Lobby at 12:45 pm
1:30 pm - 3:00 pm Virtual Option	CEQA Yoga: Bend, But Don't Break Your Project Description	CM 1.5 LAW	Platinum 3/4
	Law and Order: SB 1000 Edition	CM 1.5 LAW	Platinum 1/2
	Designing Age-Friendly Parks and Public Spaces	CM 1.5	Grand Ballroom A/D
	Planning for Fire-Adapted Communities	CM 1.5	Platinum 7/8
	Public vs. Private: Which Side are You On?	CM 1.5	Orange County Ballroom 3/4
	Quantifying How Affordable Housing Changes Lives and Communities	CM 1.5	Platinum 9/10
	Strategic Skills to Achieve Project Success (Part 1)	CM 1.5	Grand Ballroom G/K
	True Stories from the OTHER Side...The Juxtaposing Worlds of Land Use and Transit Planners	CM 1.5	Orange County Ballroom 1/2

S/R - Sustainability/Resilience



Mobile Workshops



Student Sessions/Events



Special Events



APA CALIFORNIA CONFERENCE

CONFERENCE-AT-A-GLANCE

Monday, October 3

Item # C10.

The Conference-at-a-Glance is subject to change.
The most current information can be found on the [conference website](#), on the
mobile app prior to the conference, and in the registration area when the conference begins.

3:15 pm - 4:45 pm	Community Engagement and Consensus Building for Climate Action Plans	CM 1.5 S/R	Platinum 1/2
	Designing Age-Friendly Parks & Public Spaces	CM 1.5	Grand Ballroom A/D
	Emergency Evacuation Survival Guide: Understanding Evacuation Planning & Analysis in California	CM 1.5 S/R	Platinum 3/4
	HCD's Carrots and Sticks: Promoting Local Housing Production through Incentives and Accountability	CM 1.5	Orange County Ballroom 1/2
	New Uses in Old Places: Addressing the Housing Crisis While Revitalizing Aging Commercial Districts	CM 1.5	Platinum 7/8
	Planning from Equity: Stories from People Affected-a Film and Discussion	CM 1.5 EQUITY	Orange County Ballroom 3/4
	Property Rights, Takings, Exactions, and More: A Legal and Practical Update for Planners	CM 1.5 LAW	Platinum 9/10
	Strategic Skills to Achieve Project Success (Part 2)	CM 1.5	Grand Ballroom G/K
4:45 pm - 6:00 pm	APA California Chapter Matinee Awards Show		Platinum 5/6
6:00 pm - 7:00 pm	Sponsors' Reception		Marquis Ballroom Exhibit Hall

CONFERENCE-AT-A-GLANCE

Tuesday, October 4

7:00 am - 8:00 am	Continental Breakfast		Marque Ballroom
7:00 am - 1:00 pm	Registration		Platinum Foyer
8:00 am - 9:30 am	Building Partnerships in Fresno to Deliver the Nation's First High-Speed Rail Station	CM 1.5	Platinum 7/8
	Crafting Objective Design Standards and Getting It Right: Housing, Design Review, Meeting Challenges	CM 1.5 LAW	Platinum 3/4
	What's New in Ethics? A Roundtable Discussion	CM 1.5 ETHICS	Grand Ballroom A/D
	Housing as a Climate Solution	CM 1.5 S/R	Platinum 9/10
	Leadership Skills to Advocate for Social Equity	CM 1.5 EQUITY	Platinum 5/6
	Rethinking Downtown after COVID: Sparking Community through Street Closures	CM 1.5	Platinum 1/2
8:00 am - 10:45 am	New CAPCOA Handbook: Workshop on Quantitative Methods and Application of Transportation Measures	CM 2.75 S/R	Grand Ballroom G/K
8:00 am - 12:00 pm	Exhibits Open		Marquis Ballroom Center/South
9:00 am - 11:30 am	MW#11: Housing For All - Current Approaches to Planning Design, Permitting and Funding High-Quality Affordable Housing. Additional \$35 fee applies.	CM 2.0	Meet outside the Marriott Lobby at 8:45 am

S/R - Sustainability/Resilience



APA CALIFORNIA CONFERENCE

CONFERENCE-AT-A-GLANCE

Tuesday, October 4

Item # C10.

The Conference-at-a-Glance is subject to change.

The most current information can be found on the [conference website](#), on the mobile app prior to the conference, and in the registration area when the conference begins.

9:45 am - 10:45 am Virtual Option	2022 CEQA Update: Hear the Latest from the Courts and Legislature	CM 1.0 LAW	Platinum 5/6
	Airports.....How do I get there?	CM 1.0	Orange County Ballroom 1/2
	CommUNITY Development: Uniting Planning, Building, Economic Development, and Code Enforcement	CM 1.0	Platinum 3/4
	Leveraging Technology to Develop Data Driven and Community Supported Housing Elements	CM 1.0	Platinum 1/2
	Reading the Site: Experiments in Unearthing Site Forces, Systems and Stories for Better Design	CM 1.0	Platinum 9/10
	The Big and Small of It: Regional Housing Policy for Rural Areas	CM 1.0	Orange County Ballroom 3/4
	Try Transit! Incentivizing Mode Shift and Post-Pandemic Ridership Recovery in Southern California	CM 1.0	Platinum 7/8
11:00 am - 11:30 am Virtual Option	Cannabis: "Highs" and Lows of Permitting	CM 0.5	Orange County Ballroom 3/4
	Five Lessons I Learned Working as a Public Health Planner	CM 0.5	Orange County Ballroom 1/2
	Getting Teens to the Table: Partnerships for Youth Engagement	CM 0.5	Grand Ballroom A/D
	How Can Traditional Malls Transform and Become Resilient Communities of Tomorrow?	CM 0.5	Platinum 5/6
	How Do We Get There From Here? Understanding California's Route to Carbon Neutrality	CM 0.5	Platinum 1/2
	Intersections + Identities: A Radical Rethinking of Our Transportation Experiences	CM 0.5	Platinum 3/4
	Playing the Climate-Action Long Game with Transfer of Development Rights	CM 0.5	Platinum 7/8
	Tell Me a Story: Using Graphic Design to Demystify the Development Review Process and ADUs	CM 0.5	Grand Ballroom G/K
	The Yeti in the Desert: Defrosting Economic Development with Adventure Cycling	CM 0.5	Platinum 9/10
11:45 am - 1:00 pm Virtual Option	Closing Plenary: Gettin' Real with Chat & JT <i>Chad Kroeger and JT Parr</i>	CM 0.5	Platinum 5/6
12:00 pm - 2:00 pm	Exhibitor Teardown		Marquis Ballroom Center/South



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution Authorizing the City Manager to Execute the Extension of the Sole Source Services Agreement with Flock Group Inc. for Automated License Plate Reader (ALPR) Cameras in an Amount Not-to-Exceed \$314,750 and Renew the Agreement for One Three-Year Period Subject to Annual Appropriation of Funds. (Jared Hernandez, Chief of Police, 408-586-2406)
Category:	Consent Calendar-Public Safety
Meeting Date:	9/20/2022
	<u>Recommendation:</u> Adopt a Resolution Authorizing the City Manager to Execute the Extension of the Sole Source Services Agreement with Flock Group, Inc. for Automated License Plate Reader (ALPR) Cameras in an Amount Not-to-Exceed \$314,750 and Renew the Agreement for One Three-Year Period Subject to Annual Appropriation of Funds; and authorize the Chief of Police to execute contract change orders in an aggregate amount not to exceed \$78,500.

BACKGROUND:

On April 28, 2020, the City approved a one-year Sole Source agreement with Flock Group, Inc. for the installation of an initial 20 automated license plate reader (ALPR) cameras, per the objectives outlined in CIP project number 3459 "ALPRs and Citywide Security Cameras." The original contract was a not-to-exceed amount was \$40,000.

On April 15, 2021, the City approved an additional one-year Sole Source agreement with Flock Safety for the installation of 15 additional ALPR cameras and the additional compensation amount of \$41,250 for the new cameras combined for a not-to-exceed amount of \$81,250.

On May 26, 2020, the Purchasing Agent designated Flock Group, Inc as the "Sole Source" provider of Falcon ALPR wireless cameras with patented machine learning technology in accordance with Municipal Code Section I-2-3.06 "Sole Source Procurement". Section I-2-3.06 of the Milpitas Municipal Code authorizes the Purchasing Agent to award contracts 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 there is a compelling reason for using only one source. Flock Group, Inc., is the sole manufacture and distributor of license plate reader. This designation is active for five (5) years ending on May 25, 2025 (See attached Sole Source Justification Form).

ANALYSIS:

Due to the continued success of the program, the Police Department requests to extend the original two agreements through 2023 and 2024, respectively, under one agreement amendment with Flock Safety for the thirty-five (35) existing ALPR cameras and for a contingency of up to ten (10) additional ALPR cameras, in an amount not-to-exceed \$314,750. This agreement is needed for continuance of service.

Since the approval of the initial contract and the implementation of the first set of cameras in September of 2020, the ALPR program has aided the Police Department in enhancing public safety in various ways, such as locating missing persons, identifying, and monitoring crime trends, aiding in criminal investigations and apprehensions, recovery of stolen vehicles, locating of wanted persons, and development of investigative leads in criminal and non-criminal investigations. Additionally, the ALPR program has improved efficiency in investigations by reducing staff time where other means of gathering similar information is cumbersome. Due to the overall effectiveness of the ALPR technology, staff recommends continuance of the program.

The original 1-year contract (20 cameras) not-to-exceed amount was \$40,000 and the ongoing annual cost of these cameras is \$40,000. The additional 1-year contract (15 additional cameras) not-to-exceed amount was

\$41,250 and the ongoing annual cost for these cameras is \$37,500. Extending each of these agreements an additional two years to 2023 and 2024, respectively, under one agreement amendment will increase the combined total not-to-exceed amount by \$155,000, which requires City Council approval.

In addition, staff recommends adding a contingency of \$78,500 (24%) to account for the potential addition of up to ten (10) ALPR cameras for the extent of the proposed agreement (annual cost per camera: \$2,500, plus a \$350 one-time implementation fee per camera). The contingency would allow for the timely expansion of the ALPR program, if and as needed, to further address public safety including shifting crime trends. Staff also recommends authorizing the Chief of Police to execute contract change orders in an aggregate amount not to exceed \$78,500. The change order authority will not exceed this amount. The following table shows the costs as described herein:

ALPR Equipment:	Year 1 Cost	Year 2 Cost	Year 3 Cost	Total
Initial Set of 20 Cameras (2020 through 2023)	\$40,000	\$40,000	\$40,000	\$120,000
Additional Set of 15 Cameras (2021 through 2024)	\$41,250	\$37,500	\$37,500	\$116,250
Contingency for 10 Cameras (2022 through 2025)				\$78,500
Total	\$81,250	\$77,500	\$77,500	\$314,750
	Paid			

Additionally, staff requests authority to renew the Agreement for one three-year period subject to annual appropriation of funds.

POLICY ALTERNATIVE(S):

Alternative 1: Do not approve a services agreement with Flock Safety for ALPR cameras

Pros: The City would not incur the expense of up to \$314,750 to amend the current agreements for ALPR cameras.

Cons: The Police Department would no longer have access to the ALPR technology with Flock Safety.

Reason for Not Recommending: The implementation of the ALPR program has allowed the Police Department to continue to protect the safety of the community.

FISCAL IMPACT:

The total cost of the two original agreements for the first and second sets of ALPR cameras is \$81,250, all of which was expensed in prior fiscal years. The cost of extending both agreements through 2023 and 2024, respectively, and adding a contingency as staff recommends is \$233,500, increasing the not-to-exceed amount of the total agreements to \$314,750 combined. The additional cost of \$233,500 will be paid from funds available in CIP 3459 ALPRs and Security Cameras. Funding source for CIP 3459 comes from the General Government CIP Fund and the Grants/Reimb./Developer/Fees. As of June 30, 2022, the balance for CIP 3459 is \$396,113.

California Environmental Quality Act (CEQA):

The proposed action is exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines sections 15378(b)(2) and 15378(b)(5) as ongoing administrative or organizational activities to ensure proper record keeping in the Police Department that will not result in direct or indirect physical changes in the environment.

RECOMMENDATION:

Adopt a Resolution Authorizing the City Manager to Execute the Extension of the Sole Source Services Agreement with Flock Group, Inc. for Automated License Plate Reader (ALPR) Cameras in an Amount Not-to-Exceed \$314,750 and Renew the Agreement for One Three-Year Period Subject to Annual Appropriation of Funds; and authorize the Chief of Police to execute contract change orders in an aggregate amount not to exceed \$78,500.

Attachment(s):

1. Proposed Agreement with Flock Safety
2. Budget Change Form
3. Resolution

FLOCK GROUP INC.

PO Box 207576
Dallas, TX 75320-7576

ORDER FORM

The attached documents describe the relationship between Flock Group Inc. (“**Flock**”) and the customer identified below (“**Customer**”) (each of Flock and Customer, a “**Party**”). The documents attached to this order form (“**Order Form**”) will consist of the document entitled “Terms and Conditions” (the “**SaaS Terms**”), any schedules attached thereto, and the Customer’s **Supplemental Conditions Addendum** attached hereto and incorporated herein by reference, which describe and set forth the general legal terms governing the relationship (collectively, the “**Agreement**”). The SaaS Terms contain, among other things, warranty disclaimers, liability limitations and use limitations. However, the parties agree that the Supplemental Conditions Addendum shall prevail in the event of any conflict with any other term in the Agreement, including the SaaS Terms.

The Agreement will become effective when this Order Form is executed by both Parties (the “**Effective Date**”).

Customer: Milpitas Police Department	Contact: Captain Raj Maharaj
Address: 1275 North Milpitas Blvd., Milpitas, CA 95035	Phone: (408) 586-2416
	E-Mail: rmaharaj@ci.milpitas.ca.gov
Usage Fees: \$40,000 per Year (the “Payment Period”)	Pilot Term: 60 days no obligation, after cameras are installed and validated. Invoice sent after pilot term has completed with net 30 day payment period.
Number of Cameras: <u> 20 </u>	Initial Term: <u> 12 </u> months Renewal Term: <u> 12 </u> months
Installation Fee (one-time): \$ 0	<i>*12 month contract begins after pilot is complete</i>

The Parties have executed this Agreement as of the dates set forth below.

Flock Group Inc.	Customer Name: City of Milpitas -
<i>Alex Latraverse</i>	DocuSigned by:
By: <i>Alex Latraverse</i>	By: <i>Steven G. McHarris</i>
Name: Alex Latraverse	Name: Steve McHarris
Title: VP of Sales	Title: Interim City Manager
Date: 4/28/2020	Date: Apr-28-2020

DocuSigned by:
Christopher Diaz
9B363A8B3E3946B...

ADDENDUM**CITY OF MILPITAS SUPPLEMENTAL CONDITIONS**

For purposes of this Addendum to the Agreement between Flock Group, Inc. and the City of Milpitas, the term "Contractor" shall refer to Flock Group, Inc., and the term "City" shall be used to refer to the Customer, which is the City of Milpitas Police Department.

1. California Civil Code Compliance. Contractor is advised of, and agrees it will comply with the requirements of the California Civil Code, Division 3, Part 4, Title 1.81.23 COLLECTION OF LICENSE PLATE INFORMATION [§§1798.90.5 - 1798.90.55] as applicable to an automated license plate recognition (ALPR) operator (also referred to as an "ALPR operator"). Contractor shall maintain reasonable security procedures and practices to protect ALPR information from unauthorized access, destruction, use, modification or disclosure that are at least as protective as the "Flock Safety End to End Data Security Overview," "Flock Safety CJIS Compliance Overview," and "Flock Safety Internet Security Policy," (collectively, referred to as the "Flock Security Policies") as each such policy was in effect as of January 29, 2020. Any amendment to the Flock Security Policies shall be transmitted to the City within 10 days. In the event the City determines in its sole discretion that any amendment to the Flock Security Policies either substantially reduces the privacy or security of Customer Content (including ALPR Footage) or the amendments would violate any State or Federal law, then the City shall have the right to terminate the Agreement and Flock will refund to City a pro-rata portion of the pre-paid Fees for Services not received due to such termination.
2. Disclosure of Security Breach. Contractor is advised of the requirements of the California Civil Code, section 1798.29, requiring notification to any resident of California in the event of breach of the security of the system. Contractor agrees it will notify the City immediately (and in no event more than 24 hours) upon the occurrence of any breach in the security of data that may potentially trigger the need for security breach notifications pursuant to Civil Code section 1798.29 or similar State or Federal law. The parties agree that the City will control the timing and content of any required security breach notification, and agree that Contractor shall fully pay or reimburse the City for the costs of providing any security breach notification required by Civil Code, section 1798.29, or similar State or Federal law, resulting from any security breach of the Flock Safety platform. Contractor's responsibility for the costs of providing such security breach notifications shall not be limited by any disclaimer or limitation of liability in the Agreement, including but not limited to Sections 2.1, 7.4 and 8 of the SaaS Terms of this Agreement.
3. Indemnification. To the fullest extent permitted by law, Contractor shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of or relating to any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Contractor or its employees, subcontractors, or agents. The foregoing obligation of Contractor shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Contractor or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorser required under the contract does not relieve Contractor from liability under this indemnification

and hold harmless clause. This indemnification and hold harmless clause is a material element of the Agreement and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. This Section 3 shall survive termination or expiration of this Agreement. Contractor's indemnification obligation pursuant to this Section shall not be limited by any disclaimer or limitation of liability in the Agreement, including but not limited to, Sections 2.1, 7.4 and 8 of the SaaS Terms of this Agreement.

4. Infringement. Without limiting the generality or applicability of Section 3, above, if a third party makes a claim against the City that any use of the Services in accordance with the terms of this Agreement infringes such third party's intellectual property rights, Contractor, at its sole cost and expense, will defend City against the claim and indemnify City from the damages, losses, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by Contractor, provided that City: (i) notifies Contractor promptly in writing of the claim; (ii) gives Contractor sole control of the defense and any settlement negotiations; and (iii) gives Contractor reasonable assistance in the defense of such claim. If Contractor believes or it is determined that the Services violated a third party's intellectual property rights, Contractor may choose to either modify the Services to be non-infringing or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, Contractor may terminate City's use rights and refund any unused, prepaid fees City may have paid to Contractor.
5. California Public Records Act Compliance. Notwithstanding Section 4 of the SaaS Terms, Contractor expressly understands that City is a public agency subject to the California Public Records Act (Cal. Government Code § 6250 et seq.). In the event that City receives a public records request seeking the disclosure of information that Contractor has designated as its "Proprietary Information," City shall notify Contractor, and Contractor shall be allowed to take any reasonable action to preserve the confidentiality of such information. City's obligation shall only extend to notifying Contractor of the request, and City shall have no obligation to preserve the confidentiality unless doing so is in full compliance with the law.
6. Independent Contractor. It is expressly agreed that Contractor is to perform the services described herein as an independent contractor pursuant to California Labor Code Section 3353, under the control of the City as to the result of his work only but not as to the means by which such result is accomplished. Nothing contained herein shall in any way be construed to make Contractor or any of its agents or employees, an agent, employee or representative of the City. Contractor shall be entirely responsible for the compensation of any employees used by Contractor in providing said services.
7. Subcontractors. Notwithstanding Section 2.1 of the SaaS Terms, if Contractor utilizes a third-party subcontractor or other vendor to provide the Services under this Agreement, Contractor shall ensure that such subcontractor(s) or vendor(s) complies with the terms of this Agreement, and shall be jointly and severally liable with the subcontractor/vendor for any breach by the subcontractor/vendor.
8. Insurance. During the entire term of this Agreement and any extension or modification thereof, the CONTRACTOR shall keep in effect insurance policies meeting the following insurance requirements: See Exhibit C – Insurance Requirements General.
9. Appropriation. City's funding of this Agreement shall be on a fiscal year basis (July 1 to June 30) and is subject to annual appropriations. Contractor acknowledges that the City is a municipal corporation and is precluded by the California Constitution and other laws from entering into obligations that financially bind future governing bodies. Nothing in this Agreement shall constitute an obligation of future governing bodies to appropriate funds for the purposes of this Agreement. The parties agree that the Initial Term and any renewal term(s) is contingent

the appropriation of funds by the City. This Agreement will terminate immediately if funds necessary to continue the Agreement are not appropriated. City shall pay Contractor for any services performed in accordance with this Agreement up to the date of termination.

10. Anti-Discrimination. Contractor agrees to observe the provisions of the City of Milpitas Standard Operating Procedure 16.8 "Anti-Discrimination Policy" and Title VII of the Civil Rights Act of 1964, obligating every contractor or subcontractor under a contract or subcontract to the City of Milpitas for public works or for goods or service to refrain from discriminatory employment practices on the basis of the race, color, sex, sexual orientation, religious creed, national origin or ancestry of any employee of, or applicant for employment with, such contractor or subcontractor.
11. Assignment. Contractor shall not assign this Agreement, or any part thereof, or any right of the Contractor hereunder without the prior written consent of the City. Notwithstanding, for purposes of this Contract, a merger, acquisition, reorganization, spin-off or other transaction involving a transfer of substantially all of the assets or common stock of either party hereto shall not be deemed an assignment.
12. Business License. Pursuant to the City of Milpitas Municipal Code, Title III Business and Professions, Section 1-4.01 Requirement and Special Exemptions "...it shall be unlawful for any person to transact and carry on any business, trade, profession, calling or occupation in the City of Milpitas without first having procured a license from said City".
13. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California, USA, without giving effect to principles of conflict of laws. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Santa Clara, San Jose, California.

TERMS AND CONDITIONS

1. DEFINITIONS

Certain capitalized terms, not otherwise defined herein, have the meanings set forth or cross-referenced in this Section 1.

- 1.1. “**Authorized End User**” shall mean any individual employees, agents, or contractors of Customer accessing or using the Services through the Web Interface, under the rights granted to Customer pursuant to this Agreement.
- 1.2. “**Customer Content**” will mean the data, media and content provided by Customer through the Services. For the avoidance of doubt, the Customer Content will include the Footage.
- 1.3. “**Documentation**” will mean text and/or graphical documentation, whether in electronic or printed format, that describe the features, functions and operation of the Services which are provided by Flock to Customer in accordance with the terms of this Agreement.
- 1.4. “**Embedded Software**” will mean the software and/or firmware embedded or preinstalled on the Hardware.
- 1.5. “**Flock IP**” will mean the Services, the Documentation, the Hardware, the Embedded Software, the Installation Services, and any and all intellectual property therein or otherwise provided to Customer and/or its Authorized End Users in connection with the foregoing.
- 1.6. “**Footage**” means still images captured by the Hardware in the course of and provided via the Services.
- 1.7. “**Hardware**” shall mean the Flock Gate Cameras and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Services. The term “**Hardware**” excludes the Embedded Software.
- 1.8. “**Installation Services**” means the services provided by Flock regarding the installation, placements and configuration of the Hardware, pursuant to the Statement of Work attached hereto.
- 1.9. “**Services**” means the provision, via the Web Interface, of Flock’s software application for automatic license plate detection, searching image records, and sharing Footage.
- 1.10. “**Unit(s)**” shall mean the Hardware together with the Embedded Software.
- 1.11. “**Web Interface**” means the website(s) or application(s) through which Customer and its Authorized End Users can access the Services in accordance with the terms of this Agreement.

2. SERVICES AND SUPPORT

- 2.1. **Provision of Access.** Subject to the terms of this Agreement, Flock hereby grants to Customer a nonexclusive, non-transferable right to access the features

and functions of the Services via the Web Interface during the Service Term, solely for the Authorized End Users. The Footage will be available for Customer to access via the Web Interface for 30 days. Authorized End Users will be required to sign up for an account, and select a password and user name (“**User ID**”). Flock will also provide Customer the Documentation to be used in accessing and using the Services. Customer shall be responsible for all acts and omissions of Authorized End Users, and any act or omission by an Authorized End User which, if undertaken by Customer, would constitute a breach of this Agreement, shall be deemed a breach of this Agreement by Customer. Customer shall undertake reasonable efforts to make all Authorized End Users aware of the provisions of this Agreement as applicable to such Authorized End User’s use of the Services, and shall cause Authorized End Users to comply with such provisions. Flock may use the services of one or more third parties to deliver any part of the Services, including without limitation using a third party to host the Web Interface which make the Services available to Customer and Authorized End Users. Flock will pass-through any warranties that Flock receives from its then current third party service provider to the extent that such warranties can be provided to Customer. SUCH WARRANTIES, AS PROVIDED AS HONORED BY SUCH THIRD PARTIES, ARE THE CUSTOMER’S SOLE AND EXCLUSIVE REMEDY AND FLOCK’S SOLE AND EXCLUSIVE LIABILITY WITH REGARD TO SUCH THIRD PARTY SERVICES, INCLUDING WITHOUT LIMITATION HOSTING THE WEB INTERFACE. Customer agrees to comply with any acceptable use policies and other terms of any third party service provider that are provided or otherwise made available to Customer from time to time.

- 2.2. **Embedded Software License.** Subject to all terms of this Agreement, Flock grants Customer a limited, nonexclusive, non-transferable, non-sublicensable (except to the Authorized End Users), revocable right to use the Embedded Software as installed on the Hardware by Flock; in each case, solely as necessary for Customer to use the Services.
- 2.3. **Documentation License.** Subject to the terms of this Agreement, Flock hereby grants to Customer a nonexclusive, non-transferable right and license to use the Documentation during the Service Term for Customer’s internal purposes in connection with its use of the Services as contemplated herein.
- 2.4. **Usage Restrictions.** Customer will not, and will not permit any Authorized End Users to, (i) copy or duplicate any of the Flock IP; (ii) decompile, disassemble, reverse engineer or otherwise attempt to

obtain or perceive the source code from which any software component of any of the Flock IP is compiled or interpreted, or apply any other process or procedure to derive the source code of any software included in the Flock IP, or attempt to do any of the foregoing, and Customer acknowledges that nothing in this Agreement will be construed to grant Customer any right to obtain or use such source code; (iii) modify, alter, tamper with or repair any of the Flock IP, or create any derivative product from any of the foregoing, or attempt to do any of the foregoing, except with the prior written consent of Flock; (vi) interfere or attempt to interfere in any manner with the functionality or proper working of any of the Flock IP; (v) remove, obscure, or alter any notice of any intellectual property or proprietary right appearing on or contained within any of the Application IP; (vii) use the Services for timesharing or service bureau purposes or otherwise for the benefit of a third party; or (viii) assign, sublicense, sell, resell, lease, rent or otherwise transfer or convey, or pledge as security or otherwise encumber, Customer's rights under Sections 2.1, 2.2, or 2.3.

2.5. **Retained Rights; Ownership.** As between the Parties, subject to the rights granted in this Agreement, Flock and its licensors retain all right, title and interest in and to the Flock IP and its components, and Customer acknowledges that it neither owns nor acquires any additional rights in and to the foregoing not expressly granted by this Agreement. Customer further acknowledges that Flock retains the right to use the foregoing for any purpose in Flock's sole discretion.

2.6. **Suspension.** Notwithstanding anything to the contrary in this Agreement, Flock may temporarily suspend Customer's and any Authorized End User's access to any portion or all of the Flock IP if (i) Flock reasonably determines that (a) there is a threat or attack on any of the Flock IP; (b) Customer's or any Authorized End User's use of the Flock IP disrupts or poses a security risk to the Flock IP or any other customer or vendor of Flock; (c) Customer or any Authorized End User is/are using the Flock IP for fraudulent or illegal activities; (d) Flock's provision of the Services to Customer or any Authorized End User is prohibited by applicable law; or (e) any vendor of Flock has suspended or terminated Flock's access to or use of any third party services or products required to enable Customer to access the Flock IP (each such suspension, in accordance with this Section 2.6, a "**Service Suspension**"). Flock will make commercially reasonable efforts, circumstances permitting, to provide written notice of any Service Suspension to Customer (including notices sent to Flock's registered email address) and to provide updates regarding resumption of access to the Flock IP following any Service Suspension. Flock will use commercially reasonable efforts to resume providing access to the Application Service as soon as

reasonably possible after the event giving rise to the Service Suspension is cured. Flock will have no liability for any damage, liabilities, losses (including any loss of data or profits) or any other consequences that Customer or any Authorized End User may incur as a result of a Service Suspension.

2.7. **Installation Services.** Prior to performing the physical installation of the Units, Flock shall advise Customer on the location and positioning of the Units. While Flock will provide advice regarding the location of positioning of such Units, Customer will have the ultimate decision regarding the location and position of the Units (each Unit location so designated by Customer, a "**Designated Location**"). Due to the fact that Customer selects the Designated Location, Flock shall have no liability to Customer resulting from any Footage resulting from or otherwise relating to the Designated Locations. It is understood that the Installation Fees do not include any permits or associated costs, any federal, state or local taxes including property, license, privilege, sales, use, excise, gross receipts or other similar taxes which may now or hereafter become applicable to, measured by or imposed upon or with respect to the installation of the Hardware, its use, or any other services performed in connection therewith and that Customer shall be solely responsible for the foregoing. Customer represents and warrants that it has all necessary right title and authority and hereby authorizes Flock to install the Hardware at the Designated Locations and to make any necessary inspections or tests in connection with such installation. Customer agrees to allow Flock and its agents reasonable access to the designated installation locations at all reasonable times upon reasonable notice for the purpose of performing the installation work (together with the preceding sentence, the "**Customer Installation Obligations**"). Following the initial installation of the Hardware, Flock's obligation to perform installation work shall cease; however, Flock will continue to monitor the performance of the Units. The Hardware shall be installed in a workmanlike manner in accordance with Flock's standard installation procedures, and the installation will be completed within a reasonable time from the time the Designated Locations are selected by Customer. Customer agrees and understands that the Services will not function without the Hardware. The Hardware shall remain the personal property of Flock and will be removed upon the termination or expiration of this Agreement. Customer agrees to perform all acts which may be necessary to assure the retention of title of the Hardware by Flock. Should Customer default in any payment for the Services or any part thereof, then Customer authorizes and empowers Flock to remove the Hardware or any part thereof. Such removal, if made by Flock, shall not be deemed a waiver of Flock's rights to any damages Flock may sustain as a result of Customer's default and Flock shall have the right to enforce any other legal remedy or right.

If agency chooses to request Flock Safety to move a camera, there is a \$250 fee per camera to do so.

Item # C11.

2.8. **Hazardous Conditions.** Unless otherwise stated in the Agreement, Flock's price for its services under this Agreement does not contemplate work in any areas that contain hazardous materials, or other hazardous conditions, including, without limit, asbestos. In the event any such hazardous materials are discovered in the designated locations in which Flock is to perform services under this Agreement, Flock shall have the right to cease work immediately in the area affected until such materials are removed or rendered harmless. Any additional expenses incurred by Flock as a result of the discovery or presence of hazardous material or hazardous conditions shall be the responsibility of Customer and shall be paid promptly upon billing.

2.9. **Support Services.** Subject to the payment of fees, Flock shall monitor the performance and of Services and may, from time to time, advise Customer on changes to the Services or the Designated Locations which may improve the performance or functionality of the Services or may improve the quality of the Footage. The work, its timing, and the fees payable relating to such work shall be agreed by the Parties prior to any alterations to or changes of the Services or the Designated Locations ("**Monitoring Services**"). Subject to the terms hereof, Flock will provide Customer with reasonable technical and on-site support and maintenance services ("**On-Site Services**") in-person or by email at hello@flocksafety.com. Flock will use commercially reasonable efforts to respond to requests for support.

3. RESTRICTIONS AND RESPONSIBILITIES

3.1. **Customer Obligations.** Customer agrees to provide Flock with accurate, complete, and updated registration information. Customer may not select as its User ID a name that Customer does not have the right to use, or another person's name with the intent to impersonate that person. Customer may not transfer its account to anyone else without prior written permission. Customer will not share its account or password with anyone, and must protect the security of its account and password. Customer is responsible for any activity associated with its account. Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services. Customer will, at its own expense, provide assistance to Flock, including, but not limited to, by means of access to, and use of, Customer facilities and Customer equipment, as well as by means of assistance from Customer personnel, to the limited extent any of the foregoing may be reasonably necessary to enable Flock to perform its obligations hereunder, including, without limitation, any obligations with respect to Support Services or any Installation Services.

3.2. **Customer Representations and Warranties.** Customer represents, covenants, and warrants that

Customer will use the Services only in compliance with this Agreement and all applicable laws and regulations, including but not limited to any laws relating to the recording or sharing of video, photo, or audio content. Customer hereby agrees to indemnify and hold harmless Flock against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) that arises from the Customer's alleged violation of any applicable law or third party right. Although Flock has no obligation to monitor Customer's use of the Services, Flock may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

4. CONFIDENTIALITY; CUSTOMER DATA

4.1. **Confidentiality.** Each Party (the "**Receiving Party**") understands that the other Party (the "**Disclosing Party**") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "**Proprietary Information**") of the Disclosing Party). Proprietary Information of Flock includes non-public information regarding features, functionality and performance of the Services. Proprietary Information of Customer includes non-public data provided by Customer to Flock or collected by Flock via the Unit, including the Footage, to enable the provision of the Services, which includes but is not limited to geolocation information and environmental data collected by sensors built into the Units ("**Customer Data**"). The Receiving Party agrees: (i) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the party takes with its own proprietary information, but in no event will a party apply less than reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary

Information. Flock's use of the Proprietary Information may include processing the Proprietary Information to send Customer alerts, such as when a car exits Customer's neighborhood, or to analyze the data collected to identify motion or other events. The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information

pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. For clarity, Flock may access, use, preserve and/or disclose the Footage to law enforcement authorities, government officials, and/or third parties, if legally required to do so or if Flock has a good faith belief that such access, use, preservation or disclosure is reasonably necessary to: (a) comply with a legal process; (b) enforce this Agreement, including investigation of any potential violation thereof; (c) detect, prevent or otherwise address security, fraud or technical issues; or (d) protect the rights, property or safety of Flock, its users, a third party, or the public as required or permitted by law, including respond to an emergency situation. Flock may store deleted Footage in order to comply with certain legal obligations but such retained Footage will not be retrievable without a valid court order.

4.2. **Customer Data.** As between Flock and Customer, all right, title and interest in the Customer Data, belong to and are retained solely by Customer. Customer hereby grants to Flock a limited, non-exclusive, royalty-free, worldwide license to use the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Flock to provide the Services to Customer, including without limitation the Support Services set forth in Section 2.9 above. As between Flock and Customer, Customer is solely responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data.

4.3. **Feedback.** If Customer provides any suggestions, ideas, enhancement requests, feedback, recommendations or other information relating to the subject matter hereunder, Customer hereby assigns (and will cause its agents and representatives to assign) to Flock all right, title and interest (including intellectual property rights) with respect to or resulting from any of the foregoing.

4.4. **Aggregated Data.** Notwithstanding anything in this Agreement to the contrary, Flock shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom). Customer acknowledges that Flock will be compiling anonymized and/or aggregated data based on Customer Data input into the Services (the “**Aggregated Data**”). Customer hereby grants Flock a non-exclusive, worldwide, perpetual, royalty-free right and license (during and after the term hereof) to (i) use such Aggregated Data to improve and enhance the Services and for

diagnostic and corrective purposes in connection with the Services and other Flock offerings, and (ii) disclose the Customer Data (inclusive of any Footage) to enable law enforcement monitoring against law enforcement hotlists as well as provide Footage search access to law enforcement for investigative purposes only. No rights or licenses are granted except as expressly set forth herein.

5. PAYMENT OF FEES

5.1. **Fees.** Customer will pay Flock the first Usage Fee and the Installation Fee (the “Initial Fees”) as set forth on the Order Form on or before the 7th day following the Effective Date of this Agreement. Flock is not obligated to commence the Installation Services unless and until the Initial Fees have been made and shall have no liability resulting from any delay related thereto. Customer shall pay the ongoing Usage Fees set forth on the Order Form with such Usage Fees due and payable thirty (30) days in advance of each Payment Period. All payments will be made by either ACH, check, or credit card.

5.2. **Changes to Fees.** Flock reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Term or any Renewal Term, upon sixty (60) days’ notice prior to the end of such Initial Term or Renewal Term (as applicable) to Customer (which may be sent by email). If Customer believes that Flock has billed Customer incorrectly, Customer must contact Flock no later than sixty (60) days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Flock’s customer support department. Customer acknowledges and agrees that a failure to contact Flock within this sixty (60) day period will serve as a waiver of any claim Customer may have had as a result of such billing error.

5.3. **Invoicing, Late Fees; Taxes.** Flock may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Flock thirty (30) days after the mailing date of the invoice. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection, and may result in immediate termination of Service. Customer shall be responsible for all taxes associated with Services other than U.S. taxes based on Flock’s net income.

6. TERM AND TERMINATION

6.1. **Term.** Subject to earlier termination as provided below, the initial term of this Agreement shall be for the period of time set forth on the Order Form (the “**Initial Term**”). Following the Initial Term, this Agreement will automatically renew for successive renewal terms of the length set forth on the Order Form (each, a “**Renewal Term**”, and together with the Initial Term, the “**Service Term**”) unless either party gives

the other party notice of non-renewal at least thirty (30) days prior to the end of the then-current term.

6.2. **Termination.** In the event of any material breach of this Agreement, the non-breaching party may terminate this Agreement prior to the end of the Service Term by giving thirty (30) days prior written notice to the breaching party; provided, however, that this Agreement will not terminate if the breaching party has cured the breach prior to the expiration of such thirty-day period. Either party may terminate this Agreement, without notice, (i) upon the institution by or against the other party of insolvency, receivership or bankruptcy proceedings, (ii) upon the other party's making an assignment for the benefit of creditors, or (iii) upon the other party's dissolution or ceasing to do business. Upon termination for Flock's breach, Flock will refund to Customer a pro-rata portion of the prepaid Fees for Services not received due to such termination.

6.3. **Effect of Termination.** Upon any termination, Flock will collect all Units, delete all Customer Data, terminate Customer's right to access or use any Services, and all licenses granted by Flock hereunder will immediately cease. Customer shall ensure that Flock is granted access to collect all Units and shall ensure that Flock personnel does not encounter Hazardous Conditions in the collection of such units.

6.4. **Survival.** The following sections will survive termination: 2.4, 2.5, 3, 4, 5 (with respect to any accrued rights to payment), 6.4, 7.4, and 8-9.

7. REMEDY; WARRANTY AND DISCLAIMER

7.1. **Remedy.** Upon a malfunction or failure of Hardware or Embedded Software (a "Defect"), Customer must first make commercially reasonable efforts to address the problem by contacting Flock's technical support as described in Section 2.9 above. If such efforts do not correct the Defect, Flock shall, or shall instruct one of its contractors to, in its sole discretion, repair or replace the Hardware or Embedded Software suffering from the Defect. Flock reserves the right to refuse or delay replacement or its choice of remedy for a Defect until after it has inspected and tested the affected Unit; provided that such inspection and test shall occur within 72 hours after Customer notifies the Flock of defect. Flock agrees to replace cameras once at no cost to Customer in the event of theft or damage. Subsequent replacement due to damage or theft will be at Customer's own expense with a replacement cost of \$300 per camera. Customer shall not be required to replace subsequently damaged or stolen units; however, Customer understands and agrees that functionality, including Footage, will be materially affected due to such subsequently damaged or stolen units and that Flock will have no liability to Customer regarding such affected functionality nor shall the Fees owed be impacted.

7.2. **Exclusions.** Flock will not provide the remedy described in Section 7.1 above if any of the following

exclusions apply: (a) misuse of the Hardware or Embedded Software in any manner, including operation of the Hardware or Embedded Software in any way that does not strictly comply with any applicable specifications, documentation, or other restrictions on use provided by Flock; (b) damage, alteration, or modification of the Hardware or Embedded Software in any way; or (c) combination of the Hardware or Embedded Software with software, hardware or other technology that was not expressly authorized by Flock.

7.3. **Warranty.** Flock shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Installation Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Flock or by third-party providers, or because of other causes beyond Flock's reasonable control, but Flock shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.

7.4. **Disclaimer.** THE REMEDY DESCRIBED IN SECTION 7.1 ABOVE IS CUSTOMER'S SOLE REMEDY, AND FLOCK'S SOLE LIABILITY, WITH RESPECT TO DEFECTIVE HARDWARE AND/OR EMBEDDED SOFTWARE. FLOCK DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION AND THE SUPPLEMENTAL CONDITIONS ADDENDUM, THE SERVICES AND INSTALLATION SERVICES ARE PROVIDED "AS IS" AND FLOCK DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8. LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY FLOCK AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL HARDWARE AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL CONSEQUENTIAL DAMAGES; (C) FOR ANY

MATTER BEYOND FLOCK'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED FOUR TIMES THE FEES PAID AND/OR PAYABLE BY CUSTOMER TO FLOCK FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT FLOCK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO MATTERS STATED IN THE SUPPLEMENTAL CONDITIONS ADDENDUM. IN THE EVENT OF AN EMERGENCY, CUSTOMER SHOULD CONTACT 911 AND SHOULD NOT RELY ON THE SERVICES.

9. MISCELLANEOUS

- 9.1. **Severability.** If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.
- 9.2. **Assignment.** This Agreement is not assignable, transferable or sublicensable by Customer except with Flock's prior written consent. Flock may transfer and assign any of its rights and obligations, in whole or in part, under this Agreement without consent.
- 9.3. **Entire Agreement.** This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties. If there is both an executed and a click-wrap version of this Agreement, the executed version shall govern if the terms differ.
- 9.4. **Relationship.** No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Flock in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees.
- 9.5. **Notices.** All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.
- 9.6. **Reserved.**
- 9.7. **Publicity.** Flock has the right to reference and use Customer's name and trademarks and disclose the nature of the Services provided hereunder in each case in Supplier business and development and marketing efforts, including without limitation on Flock's website.
- 9.8. **Export; US Government Customers.** Customer may not remove or export from the United States or allow the export or re-export of the Flock IP or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Services, the Hardware, the Embedded Software and Documentation are "commercial items" and according to DFAR section 252.2277014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

EXHIBIT A

Statement of work

Based on the mutually agreed deployment plan, installation services includes the following:

- Installation of Flock Cameras
- Installation of 6' or 12' Flock Camera poles as defined in the plan

This additional services Agreement will be effective when this Order Form is executed by both Parties (the “**Effective Date**”).

Initial Term: 12 Months Renewal Term: 12 Months	Billing Term: Annual payment due Net 30 per terms and conditions
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Year 1 Total **\$41,250.00**

Special terms:

- Flock Group Inc.
Today's Date - Apr 15, 2021

Order Form
CA - Milpitas Police
Department Phase 2

0066g00003Rs1JHAA

flock safety

Item # C11.

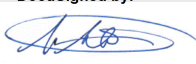
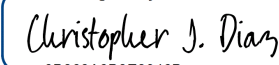
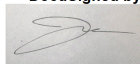
Flock Group Inc	Customer:
By: <i>Alex Latraverse</i>	DocuSigned by: 
Name: Alex Latraverse	Name: D9F94EEB50844F3 walter C Rossmann
Title: VP of Growth	Title: Deputy City Manager
Date: 04/16/2021	Date: May-03-2021

EXHIBIT A

This agreement is governed by the terms as set out in this attached agreement that has been previously executed by both parties.

DocuSigned by:

9B363A8B3E3946B...
 Christopher J. Diaz

Apr-30-2021

DocuSigned by:

BD3C4177A477436...
 Jared Hernandez, Acting Chief of Police

Apr-26-2021

Flock Group Inc.
 Today's Date - Apr 15, 2021

This proposal expires in 30 days.

Order Form
 CA - Milpitas Police
 Department Phase 2

0066g00003Rs1JHAAE

FLOCK GROUP INC.

PO Box 207576
Dallas, TX 75320-7576

ORDER FORM

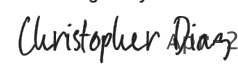
The attached documents describe the relationship between Flock Group Inc. (“**Flock**”) and the customer identified below (“**Customer**”) (each of Flock and Customer, a “**Party**”). The documents attached to this order form (“**Order Form**”) will consist of the document entitled “Terms and Conditions” (the “**SaaS Terms**”), any schedules attached thereto, and the Customer’s **Supplemental Conditions Addendum** attached hereto and incorporated herein by reference, which describe and set forth the general legal terms governing the relationship (collectively, the “**Agreement**”). The SaaS Terms contain, among other things, warranty disclaimers, liability limitations and use limitations. However, the parties agree that the Supplemental Conditions Addendum shall prevail in the event of any conflict with any other term in the Agreement, including the SaaS Terms.

The Agreement will become effective when this Order Form is executed by both Parties (the “**Effective Date**”).

Customer: Milpitas Police Department	Contact: Captain Raj Maharaj
Address: 1275 North Milpitas Blvd., Milpitas, CA 95035	Phone: (408) 586-2416
	E-Mail: rmaharaj@ci.milpitas.ca.gov
Usage Fees: \$40,000 per Year (the “Payment Period”)	Pilot Term: 60 days no obligation, after cameras are installed and validated. Invoice sent after pilot term has completed with net 30 day payment period. Initial Term: <u> 12 </u> months Renewal Term: <u> 12 </u> months
Number of Cameras: <u> 20 </u>	
Installation Fee (one-time): \$ 0	<i>*12 month contract begins after pilot is complete</i>

The Parties have executed this Agreement as of the dates set forth below.

Flock Group Inc.	Customer Name: City of Milpitas -
By:	DocuSigned by: 
Name:	Name: Steve McHarris
Title:	Title: Interim City Manager
Date:	Date: Apr - 28 - 2020

DocuSigned by:

9B363A8B3E3946B...

ADDENDUM**CITY OF MILPITAS SUPPLEMENTAL CONDITIONS**

For purposes of this Addendum to the Agreement between Flock Group, Inc. and the City of Milpitas, the term "Contractor" shall refer to Flock Group, Inc., and the term "City" shall be used to refer to the Customer, which is the City of Milpitas Police Department.

1. California Civil Code Compliance. Contractor is advised of, and agrees it will comply with the requirements of the California Civil Code, Division 3, Part 4, Title 1.81.23 COLLECTION OF LICENSE PLATE INFORMATION [§§1798.90.5 - 1798.90.55] as applicable to an automated license plate recognition (ALPR) operator (also referred to as an "ALPR operator"). Contractor shall maintain reasonable security procedures and practices to protect ALPR information from unauthorized access, destruction, use, modification or disclosure that are at least as protective as the "Flock Safety End to End Data Security Overview," "Flock Safety CJIS Compliance Overview," and "Flock Safety Internet Security Policy," (collectively, referred to as the "Flock Security Policies") as each such policy was in effect as of January 29, 2020. Any amendment to the Flock Security Policies shall be transmitted to the City within 10 days. In the event the City determines in its sole discretion that any amendment to the Flock Security Policies either substantially reduces the privacy or security of Customer Content (including ALPR Footage) or the amendments would violate any State or Federal law, then the City shall have the right to terminate the Agreement and Flock will refund to City a pro-rata portion of the pre-paid Fees for Services not received due to such termination.
2. Disclosure of Security Breach. Contractor is advised of the requirements of the California Civil Code, section 1798.29, requiring notification to any resident of California in the event of breach of the security of the system. Contractor agrees it will notify the City immediately (and in no event more than 24 hours) upon the occurrence of any breach in the security of data that may potentially trigger the need for security breach notifications pursuant to Civil Code section 1798.29 or similar State or Federal law. The parties agree that the City will control the timing and content of any required security breach notification, and agree that Contractor shall fully pay or reimburse the City for the costs of providing any security breach notification required by Civil Code, section 1798.29, or similar State or Federal law, resulting from any security breach of the Flock Safety platform. Contractor's responsibility for the costs of providing such security breach notifications shall not be limited by any disclaimer or limitation of liability in the Agreement, including but not limited to Sections 2.1, 7.4 and 8 of the SaaS Terms of this Agreement.
3. Indemnification. To the fullest extent permitted by law, Contractor shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of or relating to any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Contractor or its employees, subcontractors, or agents. The foregoing obligation of Contractor shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Contractor or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under the contract does not relieve Contractor from liability under this indemnification

and hold harmless clause. This indemnification and hold harmless clause is a material element of the Agreement and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. This Section 3 shall survive termination or expiration of this Agreement. Contractor's indemnification obligation pursuant to this Section shall not be limited by any disclaimer or limitation of liability in the Agreement, including but not limited to, Sections 2.1, 7.4 and 8 of the SaaS Terms of this Agreement.

4. Infringement. Without limiting the generality or applicability of Section 3, above, if a third party makes a claim against the City that any use of the Services in accordance with the terms of this Agreement infringes such third party's intellectual property rights, Contractor, at its sole cost and expense, will defend City against the claim and indemnify City from the damages, losses, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by Contractor, provided that City: (i) notifies Contractor promptly in writing of the claim; (ii) gives Contractor sole control of the defense and any settlement negotiations; and (iii) gives Contractor reasonable assistance in the defense of such claim. If Contractor believes or it is determined that the Services violated a third party's intellectual property rights, Contractor may choose to either modify the Services to be non-infringing or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, Contractor may terminate City's use rights and refund any unused, prepaid fees City may have paid to Contractor.
5. California Public Records Act Compliance. Notwithstanding Section 4 of the SaaS Terms, Contractor expressly understands that City is a public agency subject to the California Public Records Act (Cal. Government Code § 6250 et seq.). In the event that City receives a public records request seeking the disclosure of information that Contractor has designated as its "Proprietary Information," City shall notify Contractor, and Contractor shall be allowed to take any reasonable action to preserve the confidentiality of such information. City's obligation shall only extend to notifying Contractor of the request, and City shall have no obligation to preserve the confidentiality unless doing so is in full compliance with the law.
6. Independent Contractor. It is expressly agreed that Contractor is to perform the services described herein as an independent contractor pursuant to California Labor Code Section 3353, under the control of the City as to the result of his work only but not as to the means by which such result is accomplished. Nothing contained herein shall in any way be construed to make Contractor or any of its agents or employees, an agent, employee or representative of the City. Contractor shall be entirely responsible for the compensation of any employees used by Contractor in providing said services.
7. Subcontractors. Notwithstanding Section 2.1 of the SaaS Terms, if Contractor utilizes a third-party subcontractor or other vendor to provide the Services under this Agreement, Contractor shall ensure that such subcontractor(s) or vendor(s) complies with the terms of this Agreement, and shall be jointly and severally liable with the subcontractor/vendor for any breach by the subcontractor/vendor.
8. Insurance. During the entire term of this Agreement and any extension or modification thereof, the CONTRACTOR shall keep in effect insurance policies meeting the following insurance requirements: See Exhibit C – Insurance Requirements General.
9. Appropriation. City's funding of this Agreement shall be on a fiscal year basis (July 1 to June 30) and is subject to annual appropriations. Contractor acknowledges that the City is a municipal corporation and is precluded by the California Constitution and other laws from entering into obligations that financially bind future governing bodies. Nothing in this Agreement shall constitute an obligation of future governing bodies to appropriate funds for the purposes of this Agreement. The parties agree that the Initial Term and any renewal term(s) is contingent

the appropriation of funds by the City. This Agreement will terminate immediately if funds necessary to continue the Agreement are not appropriated. City shall pay Contractor for any services performed in accordance with this Agreement up to the date of termination.

10. Anti-Discrimination. Contractor agrees to observe the provisions of the City of Milpitas Standard Operating Procedure 16.8 "Anti-Discrimination Policy" and Title VII of the Civil Rights Act of 1964, obligating every contractor or subcontractor under a contract or subcontract to the City of Milpitas for public works or for goods or service to refrain from discriminatory employment practices on the basis of the race, color, sex, sexual orientation, religious creed, national origin or ancestry of any employee of, or applicant for employment with, such contractor or subcontractor.
11. Assignment. Contractor shall not assign this Agreement, or any part thereof, or any right of the Contractor hereunder without the prior written consent of the City. Notwithstanding, for purposes of this Contract, a merger, acquisition, reorganization, spin-off or other transaction involving a transfer of substantially all of the assets or common stock of either party hereto shall not be deemed an assignment.
12. Business License. Pursuant to the City of Milpitas Municipal Code, Title III Business and Professions, Section 1-4.01 Requirement and Special Exemptions "...it shall be unlawful for any person to transact and carry on any business, trade, profession, calling or occupation in the City of Milpitas without first having procured a license from said City".
13. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California, USA, without giving effect to principles of conflict of laws. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Santa Clara, San Jose, California.

TERMS AND CONDITIONS

1. DEFINITIONS

Certain capitalized terms, not otherwise defined herein, have the meanings set forth or cross-referenced in this Section 1.

- 1.1. “**Authorized End User**” shall mean any individual employees, agents, or contractors of Customer accessing or using the Services through the Web Interface, under the rights granted to Customer pursuant to this Agreement.
- 1.2. “**Customer Content**” will mean the data, media and content provided by Customer through the Services. For the avoidance of doubt, the Customer Content will include the Footage.
- 1.3. “**Documentation**” will mean text and/or graphical documentation, whether in electronic or printed format, that describe the features, functions and operation of the Services which are provided by Flock to Customer in accordance with the terms of this Agreement.
- 1.4. “**Embedded Software**” will mean the software and/or firmware embedded or preinstalled on the Hardware.
- 1.5. “**Flock IP**” will mean the Services, the Documentation, the Hardware, the Embedded Software, the Installation Services, and any and all intellectual property therein or otherwise provided to Customer and/or its Authorized End Users in connection with the foregoing.
- 1.6. “**Footage**” means still images captured by the Hardware in the course of and provided via the Services.
- 1.7. “**Hardware**” shall mean the Flock Gate Cameras and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Services. The term “**Hardware**” excludes the Embedded Software.
- 1.8. “**Installation Services**” means the services provided by Flock regarding the installation, placements and configuration of the Hardware, pursuant to the Statement of Work attached hereto.
- 1.9. “**Services**” means the provision, via the Web Interface, of Flock’s software application for automatic license plate detection, searching image records, and sharing Footage.
- 1.10. “**Unit(s)**” shall mean the Hardware together with the Embedded Software.
- 1.11. “**Web Interface**” means the website(s) or application(s) through which Customer and its Authorized End Users can access the Services in accordance with the terms of this Agreement.

2. SERVICES AND SUPPORT

- 2.1. **Provision of Access.** Subject to the terms of this Agreement, Flock hereby grants to Customer a nonexclusive, non-transferable right to access the features

and functions of the Services via the Web Interface during the Service Term, solely for the Authorized End Users. The Footage will be available for Customer to access via the Web Interface for 30 days. Authorized End Users will be required to sign up for an account, and select a password and user name (“**User ID**”). Flock will also provide Customer the Documentation to be used in accessing and using the Services. Customer shall be responsible for all acts and omissions of Authorized End Users, and any act or omission by an Authorized End User which, if undertaken by Customer, would constitute a breach of this Agreement, shall be deemed a breach of this Agreement by Customer. Customer shall undertake reasonable efforts to make all Authorized End Users aware of the provisions of this Agreement as applicable to such Authorized End User’s use of the Services, and shall cause Authorized End Users to comply with such provisions. Flock may use the services of one or more third parties to deliver any part of the Services, including without limitation using a third party to host the Web Interface which make the Services available to Customer and Authorized End Users. Flock will pass-through any warranties that Flock receives from its then current third party service provider to the extent that such warranties can be provided to Customer. SUCH WARRANTIES, AS PROVIDED AS HONORED BY SUCH THIRD PARTIES, ARE THE CUSTOMER’S SOLE AND EXCLUSIVE REMEDY AND FLOCK’S SOLE AND EXCLUSIVE LIABILITY WITH REGARD TO SUCH THIRD PARTY SERVICES, INCLUDING WITHOUT LIMITATION HOSTING THE WEB INTERFACE. Customer agrees to comply with any acceptable use policies and other terms of any third party service provider that are provided or otherwise made available to Customer from time to time.

- 2.2. **Embedded Software License.** Subject to all terms of this Agreement, Flock grants Customer a limited, nonexclusive, non-transferable, non-sublicensable (except to the Authorized End Users), revocable right to use the Embedded Software as installed on the Hardware by Flock; in each case, solely as necessary for Customer to use the Services.
- 2.3. **Documentation License.** Subject to the terms of this Agreement, Flock hereby grants to Customer a nonexclusive, non-transferable right and license to use the Documentation during the Service Term for Customer’s internal purposes in connection with its use of the Services as contemplated herein.
- 2.4. **Usage Restrictions.** Customer will not, and will not permit any Authorized End Users to, (i) copy or duplicate any of the Flock IP; (ii) decompile, disassemble, reverse engineer or otherwise attempt to

obtain or perceive the source code from which any software component of any of the Flock IP is compiled or interpreted, or apply any other process or procedure to derive the source code of any software included in the Flock IP, or attempt to do any of the foregoing, and Customer acknowledges that nothing in this Agreement will be construed to grant Customer any right to obtain or use such source code; (iii) modify, alter, tamper with or repair any of the Flock IP, or create any derivative product from any of the foregoing, or attempt to do any of the foregoing, except with the prior written consent of Flock; (vi) interfere or attempt to interfere in any manner with the functionality or proper working of any of the Flock IP; (v) remove, obscure, or alter any notice of any intellectual property or proprietary right appearing on or contained within any of the Application IP; (vii) use the Services for timesharing or service bureau purposes or otherwise for the benefit of a third party; or (viii) assign, sublicense, sell, resell, lease, rent or otherwise transfer or convey, or pledge as security or otherwise encumber, Customer's rights under Sections 2.1, 2.2, or 2.3.

2.5. **Retained Rights; Ownership.** As between the Parties, subject to the rights granted in this Agreement, Flock and its licensors retain all right, title and interest in and to the Flock IP and its components, and Customer acknowledges that it neither owns nor acquires any additional rights in and to the foregoing not expressly granted by this Agreement. Customer further acknowledges that Flock retains the right to use the foregoing for any purpose in Flock's sole discretion.

2.6. **Suspension.** Notwithstanding anything to the contrary in this Agreement, Flock may temporarily suspend Customer's and any Authorized End User's access to any portion or all of the Flock IP if (i) Flock reasonably determines that (a) there is a threat or attack on any of the Flock IP; (b) Customer's or any Authorized End User's use of the Flock IP disrupts or poses a security risk to the Flock IP or any other customer or vendor of Flock; (c) Customer or any Authorized End User is/are using the Flock IP for fraudulent or illegal activities; (d) Flock's provision of the Services to Customer or any Authorized End User is prohibited by applicable law; or (e) any vendor of Flock has suspended or terminated Flock's access to or use of any third party services or products required to enable Customer to access the Flock IP (each such suspension, in accordance with this Section 2.6, a "**Service Suspension**"). Flock will make commercially reasonable efforts, circumstances permitting, to provide written notice of any Service Suspension to Customer (including notices sent to Flock's registered email address) and to provide updates regarding resumption of access to the Flock IP following any Service Suspension. Flock will use commercially reasonable efforts to resume providing access to the Application Service as soon as

reasonably possible after the event giving rise to the Service Suspension is cured. Flock will have no liability for any damage, liabilities, losses (including any loss of data or profits) or any other consequences that Customer or any Authorized End User may incur as a result of a Service Suspension.

2.7. **Installation Services.** Prior to performing the physical installation of the Units, Flock shall advise Customer on the location and positioning of the Units. While Flock will provide advice regarding the location of positioning of such Units, Customer will have the ultimate decision regarding the location and position of the Units (each Unit location so designated by Customer, a "**Designated Location**"). Due to the fact that Customer selects the Designated Location, Flock shall have no liability to Customer resulting from any Footage resulting from or otherwise relating to the Designated Locations. It is understood that the Installation Fees do not include any permits or associated costs, any federal, state or local taxes including property, license, privilege, sales, use, excise, gross receipts or other similar taxes which may now or hereafter become applicable to, measured by or imposed upon or with respect to the installation of the Hardware, its use, or any other services performed in connection therewith and that Customer shall be solely responsible for the foregoing. Customer represents and warrants that it has all necessary right title and authority and hereby authorizes Flock to install the Hardware at the Designated Locations and to make any necessary inspections or tests in connection with such installation. Customer agrees to allow Flock and its agents reasonable access to the designated installation locations at all reasonable times upon reasonable notice for the purpose of performing the installation work (together with the preceding sentence, the "**Customer Installation Obligations**"). Following the initial installation of the Hardware, Flock's obligation to perform installation work shall cease; however, Flock will continue to monitor the performance of the Units. The Hardware shall be installed in a workmanlike manner in accordance with Flock's standard installation procedures, and the installation will be completed within a reasonable time from the time the Designated Locations are selected by Customer. Customer agrees and understands that the Services will not function without the Hardware. The Hardware shall remain the personal property of Flock and will be removed upon the termination or expiration of this Agreement. Customer agrees to perform all acts which may be necessary to assure the retention of title of the Hardware by Flock. Should Customer default in any payment for the Services or any part thereof, then Customer authorizes and empowers Flock to remove the Hardware or any part thereof. Such removal, if made by Flock, shall not be deemed a waiver of Flock's rights to any damages Flock may sustain as a result of Customer's default and Flock shall have the right to enforce any other legal remedy or right.

If agency chooses to request Flock Safety to move a camera, there is a \$250 fee per camera to do so.

Item # C11.

2.8. **Hazardous Conditions.** Unless otherwise stated in the Agreement, Flock's price for its services under this Agreement does not contemplate work in any areas that contain hazardous materials, or other hazardous conditions, including, without limit, asbestos. In the event any such hazardous materials are discovered in the designated locations in which Flock is to perform services under this Agreement, Flock shall have the right to cease work immediately in the area affected until such materials are removed or rendered harmless. Any additional expenses incurred by Flock as a result of the discovery or presence of hazardous material or hazardous conditions shall be the responsibility of Customer and shall be paid promptly upon billing.

2.9. **Support Services.** Subject to the payment of fees, Flock shall monitor the performance and of Services and may, from time to time, advise Customer on changes to the Services or the Designated Locations which may improve the performance or functionality of the Services or may improve the quality of the Footage. The work, its timing, and the fees payable relating to such work shall be agreed by the Parties prior to any alterations to or changes of the Services or the Designated Locations ("**Monitoring Services**"). Subject to the terms hereof, Flock will provide Customer with reasonable technical and on-site support and maintenance services ("**On-Site Services**") in-person or by email at hello@flocksafety.com. Flock will use commercially reasonable efforts to respond to requests for support.

3. RESTRICTIONS AND RESPONSIBILITIES

3.1. **Customer Obligations.** Customer agrees to provide Flock with accurate, complete, and updated registration information. Customer may not select as its User ID a name that Customer does not have the right to use, or another person's name with the intent to impersonate that person. Customer may not transfer its account to anyone else without prior written permission. Customer will not share its account or password with anyone, and must protect the security of its account and password. Customer is responsible for any activity associated with its account. Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services. Customer will, at its own expense, provide assistance to Flock, including, but not limited to, by means of access to, and use of, Customer facilities and Customer equipment, as well as by means of assistance from Customer personnel, to the limited extent any of the foregoing may be reasonably necessary to enable Flock to perform its obligations hereunder, including, without limitation, any obligations with respect to Support Services or any Installation Services.

3.2. **Customer Representations and Warranties.** Customer represents, covenants, and warrants that

Customer will use the Services only in compliance with this Agreement and all applicable laws and regulations, including but not limited to any laws relating to the recording or sharing of video, photo, or audio content. Customer hereby agrees to indemnify and hold harmless Flock against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) that arises from the Customer's alleged violation of any applicable law or third party right. Although Flock has no obligation to monitor Customer's use of the Services, Flock may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

4. CONFIDENTIALITY; CUSTOMER DATA

4.1. **Confidentiality.** Each Party (the "**Receiving Party**") understands that the other Party (the "**Disclosing Party**") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "**Proprietary Information**" of the Disclosing Party). Proprietary Information of Flock includes non-public information regarding features, functionality and performance of the Services. Proprietary Information of Customer includes non-public data provided by Customer to Flock or collected by Flock via the Unit, including the Footage, to enable the provision of the Services, which includes but is not limited to geolocation information and environmental data collected by sensors built into the Units ("**Customer Data**"). The Receiving Party agrees: (i) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the party takes with its own proprietary information, but in no event will a party apply less than reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary

Information. Flock's use of the Proprietary Information may include processing the Proprietary Information to send Customer alerts, such as when a car exits Customer's neighborhood, or to analyze the data collected to identify motion or other events. The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information

pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. For clarity, Flock may access, use, preserve and/or disclose the Footage to law enforcement authorities, government officials, and/or third parties, if legally required to do so or if Flock has a good faith belief that such access, use, preservation or disclosure is reasonably necessary to: (a) comply with a legal process; (b) enforce this Agreement, including investigation of any potential violation thereof; (c) detect, prevent or otherwise address security, fraud or technical issues; or (d) protect the rights, property or safety of Flock, its users, a third party, or the public as required or permitted by law, including respond to an emergency situation. Flock may store deleted Footage in order to comply with certain legal obligations but such retained Footage will not be retrievable without a valid court order.

4.2. **Customer Data.** As between Flock and Customer, all right, title and interest in the Customer Data, belong to and are retained solely by Customer. Customer hereby grants to Flock a limited, non-exclusive, royalty-free, worldwide license to use the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Flock to provide the Services to Customer, including without limitation the Support Services set forth in Section 2.9 above. As between Flock and Customer, Customer is solely responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data.

4.3. **Feedback.** If Customer provides any suggestions, ideas, enhancement requests, feedback, recommendations or other information relating to the subject matter hereunder, Customer hereby assigns (and will cause its agents and representatives to assign) to Flock all right, title and interest (including intellectual property rights) with respect to or resulting from any of the foregoing.

4.4. **Aggregated Data.** Notwithstanding anything in this Agreement to the contrary, Flock shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom). Customer acknowledges that Flock will be compiling anonymized and/or aggregated data based on Customer Data input into the Services (the “**Aggregated Data**”). Customer hereby grants Flock a non-exclusive, worldwide, perpetual, royalty-free right and license (during and after the term hereof) to (i) use such Aggregated Data to improve and enhance the Services and for

diagnostic and corrective purposes in connection with the Services and other Flock offerings, and (ii) disclose the Customer Data (inclusive of any Footage) to enable law enforcement monitoring against law enforcement hotlists as well as provide Footage search access to law enforcement for investigative purposes only. No rights or licenses are granted except as expressly set forth herein.

5. PAYMENT OF FEES

5.1. **Fees.** Customer will pay Flock the first Usage Fee and the Installation Fee (the “Initial Fees”) as set forth on the Order Form on or before the 7th day following the Effective Date of this Agreement. Flock is not obligated to commence the Installation Services unless and until the Initial Fees have been made and shall have no liability resulting from any delay related thereto. Customer shall pay the ongoing Usage Fees set forth on the Order Form with such Usage Fees due and payable thirty (30) days in advance of each Payment Period. All payments will be made by either ACH, check, or credit card.

5.2. **Changes to Fees.** Flock reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Term or any Renewal Term, upon sixty (60) days’ notice prior to the end of such Initial Term or Renewal Term (as applicable) to Customer (which may be sent by email). If Customer believes that Flock has billed Customer incorrectly, Customer must contact Flock no later than sixty (60) days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Flock’s customer support department. Customer acknowledges and agrees that a failure to contact Flock within this sixty (60) day period will serve as a waiver of any claim Customer may have had as a result of such billing error.

5.3. **Invoicing, Late Fees; Taxes.** Flock may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Flock thirty (30) days after the mailing date of the invoice. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection, and may result in immediate termination of Service. Customer shall be responsible for all taxes associated with Services other than U.S. taxes based on Flock’s net income.

6. TERM AND TERMINATION

6.1. **Term.** Subject to earlier termination as provided below, the initial term of this Agreement shall be for the period of time set forth on the Order Form (the “**Initial Term**”). Following the Initial Term, this Agreement will automatically renew for successive renewal terms of the length set forth on the Order Form (each, a “**Renewal Term**”, and together with the Initial Term, the “**Service Term**”) unless either party gives

the other party notice of non-renewal at least thirty (30) days prior to the end of the then-current term.

6.2. **Termination.** In the event of any material breach of this Agreement, the non-breaching party may terminate this Agreement prior to the end of the Service Term by giving thirty (30) days prior written notice to the breaching party; provided, however, that this Agreement will not terminate if the breaching party has cured the breach prior to the expiration of such thirty-day period. Either party may terminate this Agreement, without notice, (i) upon the institution by or against the other party of insolvency, receivership or bankruptcy proceedings, (ii) upon the other party's making an assignment for the benefit of creditors, or (iii) upon the other party's dissolution or ceasing to do business. Upon termination for Flock's breach, Flock will refund to Customer a pro-rata portion of the prepaid Fees for Services not received due to such termination.

6.3. **Effect of Termination.** Upon any termination, Flock will collect all Units, delete all Customer Data, terminate Customer's right to access or use any Services, and all licenses granted by Flock hereunder will immediately cease. Customer shall ensure that Flock is granted access to collect all Units and shall ensure that Flock personnel does not encounter Hazardous Conditions in the collection of such units.

6.4. **Survival.** The following sections will survive termination: 2.4, 2.5, 3, 4, 5 (with respect to any accrued rights to payment), 6.4, 7.4, and 8-9.

7. REMEDY; WARRANTY AND DISCLAIMER

7.1. **Remedy.** Upon a malfunction or failure of Hardware or Embedded Software (a "Defect"), Customer must first make commercially reasonable efforts to address the problem by contacting Flock's technical support as described in Section 2.9 above. If such efforts do not correct the Defect, Flock shall, or shall instruct one of its contractors to, in its sole discretion, repair or replace the Hardware or Embedded Software suffering from the Defect. Flock reserves the right to refuse or delay replacement or its choice of remedy for a Defect until after it has inspected and tested the affected Unit; provided that such inspection and test shall occur within 72 hours after Customer notifies the Flock of defect. Flock agrees to replace cameras once at no cost to Customer in the event of theft or damage. Subsequent replacement due to damage or theft will be at Customer's own expense with a replacement cost of \$300 per camera. Customer shall not be required to replace subsequently damaged or stolen units; however, Customer understands and agrees that functionality, including Footage, will be materially affected due to such subsequently damaged or stolen units and that Flock will have no liability to Customer regarding such affected functionality nor shall the Fees owed be impacted.

7.2. **Exclusions.** Flock will not provide the remedy described in Section 7.1 above if any of the following

exclusions apply: (a) misuse of the Hardware or Embedded Software in any manner, including operation of the Hardware or Embedded Software in any way that does not strictly comply with any applicable specifications, documentation, or other restrictions on use provided by Flock; (b) damage, alteration, or modification of the Hardware or Embedded Software in any way; or (c) combination of the Hardware or Embedded Software with software, hardware or other technology that was not expressly authorized by Flock.

7.3. **Warranty.** Flock shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Installation Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Flock or by third-party providers, or because of other causes beyond Flock's reasonable control, but Flock shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.

7.4. **Disclaimer.** THE REMEDY DESCRIBED IN SECTION 7.1 ABOVE IS CUSTOMER'S SOLE REMEDY, AND FLOCK'S SOLE LIABILITY, WITH RESPECT TO DEFECTIVE HARDWARE AND/OR EMBEDDED SOFTWARE. FLOCK DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION AND THE SUPPLEMENTAL CONDITIONS ADDENDUM, THE SERVICES AND INSTALLATION SERVICES ARE PROVIDED "AS IS" AND FLOCK DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8. LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY FLOCK AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL HARDWARE AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL CONSEQUENTIAL DAMAGES; (C) FOR ANY

MATTER BEYOND FLOCK'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED FOUR TIMES THE FEES PAID AND/OR PAYABLE BY CUSTOMER TO FLOCK FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT FLOCK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO MATTERS STATED IN THE SUPPLEMENTAL CONDITIONS ADDENDUM. IN THE EVENT OF AN EMERGENCY, CUSTOMER SHOULD CONTACT 911 AND SHOULD NOT RELY ON THE SERVICES.

9. MISCELLANEOUS

- 9.1. **Severability.** If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.
- 9.2. **Assignment.** This Agreement is not assignable, transferable or sublicensable by Customer except with Flock's prior written consent. Flock may transfer and assign any of its rights and obligations, in whole or in part, under this Agreement without consent.
- 9.3. **Entire Agreement.** This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties. If there is both an executed and a click-wrap version of this Agreement, the executed version shall govern if the terms differ.
- 9.4. **Relationship.** No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Flock in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees.
- 9.5. **Notices.** All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.
- 9.6. **Reserved.**
- 9.7. **Publicity.** Flock has the right to reference and use Customer's name and trademarks and disclose the nature of the Services provided hereunder in each case in Supplier business and development and marketing efforts, including without limitation on Flock's website.
- 9.8. **Export; US Government Customers.** Customer may not remove or export from the United States or allow the export or re-export of the Flock IP or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Services, the Hardware, the Embedded Software and Documentation are "commercial items" and according to DFAR section 252.2277014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

EXHIBIT A

Statement of work

Based on the mutually agreed deployment plan, installation services includes the following:

- Installation of Flock Cameras
- Installation of 6' or 12' Flock Camera poles as defined in the plan



Item # C11.

Flock Group Inc.
Today's Date - Apr 15, 2021

This proposal expires in 30 days.

Order Form
CA - Milpitas Police
Department Phase 2
0066g00003Rs1JHAAE

flock safety

FLOCK GROUP INC. AMENDMENT

This Amendment, together with the Terms (as defined herein) describe the relationship between Flock Group Inc. (“**Flock**”) and the customer identified below (“**Agency**”) (each of Flock and Agency, a “**Party**”). This Amendment hereby incorporates and includes the previously executed agreement relating to the provision of services by Flock to the Agency dated April 28, 2020, whereby 20 Falcon cameras purchased for an annual cost of \$40,000.00 with the initial term ending on November 22, 2023, and the Expansion Agreement dated April 26, 2021, whereby 15 Falcon cameras purchased for an annual cost of \$41,250.00 with the initial term ending on December 14, 2024, (the “**Terms**”), any schedules attached thereto, and incorporated herein by reference, which describe and set forth the general legal terms governing the relationship (collectively, the “**Agreement**”). The Terms contain, among other things, warranty disclaimers, liability limitations and use limitations. The Parties understand and agree that any prior orders or agreements between the Parties have been replaced and any outstanding services provided by Flock are now subject to this Agreement.

The Agreement will become effective when executed by both Parties (the “**Effective Date**”).

In consideration of the promises and continued mutual agreements and covenants set forth herein, the Government Agency Customer Agreement is modified as follows:

Notwithstanding anything to the contrary on the Order Form, the Initial Term shall be (36) months. The Renewal Term shall be (36) months. The total number of Falcon cameras is 35, for a total cost of \$232,500.00.

Flock Group, Inc	Customer:
By: Name: Title: Date:	By: Name: Title: Date:



CITY OF MILPITAS SOLE SOURCE REQUEST

THIS FORM MUST BE COMPLETED AND APPROVED PRIOR TO ANY PROCUREMENT

When a request is made for a non-competitive procurement and the specification limits the bidding to one source and/or one brand or trade name, the requesting department must complete the following. Please answer in the space provided, or in an attachment address by specific reference, each question listed below (1-5) in your justification. **Be sure to answer each part of each question. Failure to respond fully to any of the questions could result in delay or rejection of your request due to inadequate justification.**

1. Using appropriate detail, including brand name and model number, briefly describe the product you wish to procure. In the case of a service use enough detail to clearly describe to someone not familiar with the process what you are procuring.

Flock Group Inc. Automated License Plate Reader (ALPR) system. The Flock Group Inc. ALPRs are wireless and integrated cellular communication. The ALPR data is stored on their cloud storage system for 30-days.

(20) Flock Safety Falcon ALPR Cameras

Total 1 Year Package Cost	
Description	Amount
Transactional charges	\$40,000.00
TOTAL	\$40,000.00

2. Please check one:

a) ☒ **SOLE SOURCE:** Item is available from one source only.

If it is your assertion that the manufacturer or distributor is the only authorized source in the Bay Area, Northern California; or whatever the claim is; please substantiate that with a letter from the manufacturer or distributor. The letter must be on their stationary but can be sent via email. Attach a copy to this form.

b) ☐ **STANDARDIZATION REQUEST:** The Department requires the item to standardize parts, design, quality etc. **(This requires further discussion with the Purchasing Agent.)**

3. 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?)

Flock Group Inc. is the sole manufacturer and developer of the Flock Safety Camera. Flock Group Inc. is also the sole provider of the comprehensive monitoring, processing, and machine

vision services which integrate with the Flock Safety Camera.

The Flock Group Inc. camera system allows for the wireless deployment of an ALPR camera with integrated cellular communication. The wireless ALPR camera weighs less than 5lbs. and can be powered solely by a solar panel or existing City own light pole. Cameras have on device machine processing to limit LTE cellular bandwidth consumption. Cameras have an inobtrusive industrial design to minimize visual pollution. Due to their wireless nature and use of integrated cellular communication, the cameras do not rely on any existing City Internet or Wi-Fi infrastructure to be deployed thus reducing the need for City staff to maintain and/or support the deployed cameras.

Flock Group Inc. cameras have machine vision which can analyze a vehicle's license plate, license plate state, vehicle color, and vehicle make. This data is then searchable by the user to assist in criminal investigations. Machine vision can recognize and identify characteristics of vehicles with paper plates and in the absence of an actual license plate. Machine vision to detect persons, animals, vehicles, and other cars. These ALPR cameras will be replaced with updated equipment as they release newer versions.

Cloud storage of data with option to store data locally and/or send/store data thru the Northern California Regional Intelligence Center (NCRIC). NCRIC is a Federal, State, and Local public safety government program that helps safeguard each of our communities by serving as a dynamic security nexus that is connected to the Nation Network of Fusion Centers and our nation's High Intensity Drug Trafficking Areas. Web based data access with no per user license fee. Flock Safety integrates a web-based retrieval tool with filtering capabilities such as vehicle color, partial/full license plate, and object detection. Performance monitoring software to predict potential failures, obstructions, tilts, and other critical or minor issues.

4. 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, and telephone number of the company representative who's product you tested.)***

While there are other ALPR camera systems available from vendors such as PIPS Technology, Vigilant Solutions, and V5 Systems; Flock Group Inc. offers an ALPR program in which the cameras are retained by the Police Department in an as needed basis rather than permanently retained like cameras from other vendors. Should the Police Department end their partnership with Flock Group Inc., there is no need to sell cameras no longer needed or attempt to locate another vendor that would be able to repurpose the cameras for additional use. Upon ending the partnership, the Police Department would merely return the hardware and not incur any financial loss for hardware or licensing other than the payment for the term the products were used. Other vendors do not have a similar model and if the partnership is terminated, the Police Department would retain the equipment which would essentially have no usefulness.

Pricing for the Flock Group Inc. Falcon Camera includes all necessary facets to enable the user to deploy the cameras without any additional costs for licensing, installation, additional hardware, etc. V5 Systems offers a twenty camera ALPR system for a year period at \$226,251 and PIPS offers a twenty camera ALPR system for a two-year period is \$226,154.

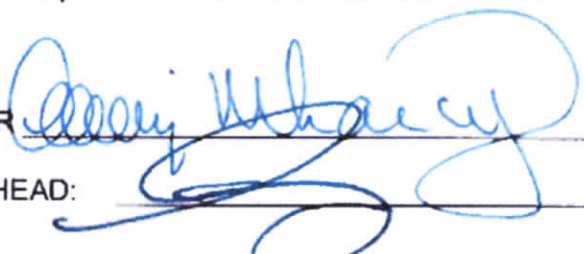
5. If justification is based on matching and/or intermixing with existing equipment (refer to 2.c.), list the quantity, manufacturer, brand, and model of the existing equipment, and why the matching is required not simply preferred.

N/A

I HEREBY CERTIFY THAT:

1. I am an approved department representative and am aware of the City's requirements for competitive bidding, as well as the criteria for justification for sole source 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 procurement and meeting the City's criteria.
4. A sole source procurement in this case would withstand a possible audit or a vendor's protest.

REQUESTOR



DATE: 05/26/2020

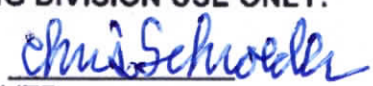
DEPT./DIV. HEAD:



DATE: 5/26/2020

PURCHASING DIVISION USE ONLY:

APPROVED:



PURCHASING AGENT:

NOT APPROVED: _____

DATE: 5/26/20

COMMENTS:

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING THE CITY MANAGER TO EXECUTE THE SOLE SOURCE SERVICES AGREEMENT WITH FLOCK GROUP, INC. FOR AUTOMATED LICENSE PLATE READER (ALPR) CAMERAS IN AN AMOUNT NOT-TO-EXCEED \$314,750 AND RENEW THE AGREEMENT FOR ONE THREE-YEAR PERIOD SUBJECT TO ANNUAL APPROPRIATION OF FUNDS; AND AUTHORIZE THE CHIEF OF POLICE TO EXECUTE CONTRACT CHANGE ORDERS IN AN AGGREGATE AMOUNT NOT-TO-EXCEED \$78,500.

WHEREAS, On April 28, 2020, the City approved a one-year Sole Source agreement with Flock Group, Inc. for the installation of an initial 20 automated license plate reader (ALPR) cameras. The original contract was a not-to-exceed amount was \$40,000., and:

WHEREAS, on May 26, 2020, the Purchasing Agent designated Flock Group, Inc as the “Sole Source” provider of Falcon ALPR wireless cameras with patented machine learning technology in accordance with Municipal Code Section I-2-3.06 “Sole Source Procurement”. Section I-2-3.06 of Milpitas Municipal Code authorizes the City Council to award contracts without competition when the Purchasing Agent determines that there is only one (1) source for the required supply or service. This designation is active for five (5) years ending on May 25, 2025, and;

WHEREAS, On April 15, 2021, the City approved an additional one-year Sole Source agreement with Flock Safety for the installation of 15 additional ALPR cameras for the additional compensation amount of \$41,250 for the new cameras combined with the original 20 for a not-to-exceed amount of \$81,250.

WHEREAS, ALPR program has aided the Police Department in enhancing public safety in various ways, such as locating missing persons, identifying and monitoring crime trends, aiding in criminal investigations and apprehensions, recovery of stolen vehicles, locating of wanted persons, and development of investigative leads in criminal and non-criminal investigations, and ;

WHEREAS, the ALPR program has improved efficiency in investigations by reducing staff time where other means of gathering similar information is cumbersome. Due to the overall effectiveness of the ALPR technology, staff therefore recommends continuance of the program, and;

WHEREAS, the original 1-year contract (20 cameras) not-to-exceed amount was \$40,000 and the ongoing annual cost for these cameras is \$40,000. The additional 1-year contract (15 additional cameras) not-to-exceed amount was \$41,250 and the ongoing annual cost for these cameras is \$37,500. Extending each of these agreements an additional two years to 2023 and 2024, respectively, would increase the combined total not-to-exceed amount by \$155,000, and;

WHEREAS, Flock Group, Inc has submitted the “Amendment” labeled EXHIBIT – A in the amount of \$232,500 with a 36 month term based on the “Effective Date” both parties sign with an option to renew the agreement for one three-year period, and ;

WHEREAS, staff recommends adding a contingency of \$78,500 (24%) to account for the potential addition of up to ten (10) ALPR cameras for the extent of the proposed agreement (annual cost per camera: \$2,500, plus a \$350 one-time implementation fee per camera). The contingency would allow for the timely expansion of the ALPR program, if and as needed, to further address public safety including shifting crime trends, and:

WHEREAS, Staff also recommends authorizing the Chief of Police to execute contract change orders in an aggregate amount not to exceed \$78,500.

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 authorizes the City Manager to execute the Extension of the Sole Source Services Agreement with Flock Group, Inc. for Automated License Plate Reader (ALPR) cameras in an amount not to exceed \$314,750, which includes a contingency of \$78,500, and renewal of the Agreement for one three-year period subject to annual appropriation of funds.
3. The City Council hereby also authorizes the Chief of Police to execute contract change orders in an aggregate amount not-to-exceed \$78,500.

PASSED AND ADOPTED this__day of_____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta, Acting City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi, City Attorney



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Award IFB 23-009 and Authorize the City Manager to Execute the Purchase Order with Iteris Inc. for the Purchase of Thirty Iteris Traffic Cameras for the Not-to-Exceed Amount of \$125,606.25 (Staff Contact: Roger Lee, Interim Director of Public Works 408-586-2602 and Chris Schroeder, Purchasing Agent, 408-586-3161)
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	9/20/2022
	<u>Recommendation:</u> Award IFB 23-009 and Authorize the City Manager to execute the purchase order with Iteris Inc. for the purchase of thirty Iteris traffic cameras for the not-to-exceed amount of \$125,606.25.

Background:

Public Works is responsible for the repairs, replacement, and minor improvements to streetlights, signage, and traffic control devices. Funding was programmed in FY 2022-2023 Capital Budget for the purchase of thirty traffic signal cameras. These cameras will primarily replace and upgrade existing cameras as well install new cameras at select intersections throughout the City of Milpitas. This enhancement would improve traffic safety and operations.

Analysis:

On March 18, 2022, the City's Purchasing Division released Invitation for Bid (IFB) No. 22-072 for the purchase of thirty Iteris traffic cameras or equal. The IFB outlined the City's need for thirty of these cameras as well as associated parts, materials, and components for their successful implementation in the field. Two firms responded to the IFB by the published closing date of April 15, 2022. One firm submitted a "No Bid" response and Iteris Inc. submitted a bid for the camera models specified in the bid documents. The bid received was reviewed by Purchasing staff for compliance and responsiveness. In hopes of soliciting additional bidders, the bid was ultimately rejected and rebid on August 4, 2022 in IFB No. 23-009. In both solicitations, the City specified the Iteris cameras "or equal" for compatibility with currently deployed models in the field. While the City routinely accepts "or equal" submissions in its solicitations so long as they meet or exceed the specifications of the equipment identified by City staff, none were submitted in response to either IFB.

Each IFB was publicly noticed in accordance with the City's Municipal Code, advertised on the City's website, emailed to companies registered with the City via Procurement OpenGov.com, the City's eProcurement system. Additionally, each IFB was published on the City's website.

Upon release of IFB No. 23-009, 823 firms were notified of the bid opportunity and nine firms downloaded the IFB documents. Two firms responded to the IFB by the published closing date of August 26, 2022. Similar to IFB No. 22-072, one firm submitted a "No Bid" response and Iteris Inc. submitted a bid for the camera models specified in the bid documents. The bid received was reviewed by Purchasing staff for compliance and responsiveness and accepted.

The table below shows the final bid tabulation with the recommended firm highlighted in green:

Purchase of Thirty Iteris Traffic Cameras IFB No. 23-009	Iteris Inc.
Thirty Iteris Traffic Cameras	\$125,606.25

Policy Alternatives:

Alternative 1: Do not award IFB 23-009 to Iteris Inc. for the Purchase of Thirty Iteris Traffic Cameras

Pros: None.

Cons: If the purchase of traffic cameras is not awarded to Iteris, staff would have to rebid a third time with little expectation of different results.

Reason not recommended: Installation would be further delayed resulting in less than efficient traffic operations at select intersections. If staff is directed to purchase equipment specified as Iteris "or equal", there would be a likely cost impact related to inefficiencies in maintenance parts and service, and training; and cost increases. Additionally, most the City's existing traffic cameras are manufactured by Iteris and are compatible with existing controllers and Advanced Traffic Management System (ATMS).

Fiscal Impact:

The bid price for the purchase of thirty Iteris traffic cameras amounts to \$125,606.25. Sufficient funding is available in CIP No. 3440 – Annual Street Light, Signal, and Signage. Funding for CIP 3440 comes from the Gas Tax Fund and the General Government CIP Fund. As of June 30, 2022, the balance in CIP 3440 is \$182,631.

California Environmental Quality Act:

Not applicable. The selection and contractual arrangement do not constitute a project, in accordance with Section 15378 of the CEQA Guidelines.

Recommendation:

Award IFB 23-009 and Authorize the City Manager to execute the purchase order with Iteris Inc. for the purchase of thirty Iteris traffic cameras for the not-to-exceed amount of \$125,606.25.

Attachments:

1. City of Milpitas Purchase Order Terms and Conditions for Equipment

PURCHASE ORDER TERMS AND CONDITIONS FOR EQUIPMENT AND MATERIALS

1. Acceptance. This purchase order for equipment and materials issued by the City of Milpitas ("CITY") to the Vendor designated in the purchase order must be promptly accepted and acceptance is expressly limited to the terms of this order. Any additions or different terms in the Vendor's forms are hereby deemed to be material alterations and notice of objection to them and rejection of them is hereby given. Vendor's shipment of goods in response to this order shall be considered acceptance by the Vendor.

2. Entire Agreement. Unless Vendor and CITY have entered into a separate written contract covering the purchase of the goods described herein, the entire contract between the parties consists of this order and the Vendor's acceptance as above stipulated, and said contract shall not be changed or added to except in writing signed by authorized representatives of each party.

3. Price. The price invoiced for the goods on this purchase order shall be no higher than the price stated on the front of this purchase order unless prior notification is received from Vendor prior to shipment and the change is accepted by CITY. If the Vendor's established price for any item upon the date of delivery shall be lower than the price shown on this purchase order, CITY shall have the benefit of such lower price. Vendor shall deliver to CITY all invoices within 30 days of shipping or service delivery.

4. Payment. Payments will be made net 30 days unless otherwise specified as per agreements regarding discount terms. The period of computation will commence on the date of receipt of a correctly completed invoice. Payment may be withheld, in whole or in part, due to deficiencies in Vendor's performance. Payment of an invoice by CITY shall be without prejudice to any and all claims CITY may have against Vendor in connection with such goods. Invoices are paid on a weekly basis and such practice may result in minor deviations from payment terms otherwise cited herein.

5. Time of the Essence. Time is of the essence on this order. If delivery is not made in the quantity or quantities and at the time or times specified, CITY shall have the right, at its option, to cancel the entire order or that part of same not so delivered. If CITY accepts delayed delivery the time of payment shall be extended accordingly.

6. Delivery and Acceptance. Vendor expressly warrants that any article, material or work is free and clear of all liens and encumbrances whatsoever, and that Vendor has good and marketable title to same. Unless otherwise specified, all goods are to be shipped prepaid, F.O.B. destination. No charge will be allowed for packing, crating, freight, express or other carrier's charges, or cartage, unless specifically agreed to by CITY. Title to equipment and materials purchased hereunder shall pass to Vendor at the designated F.O.B. point, subject to Vendor's right to inspect and reject or revoke acceptance.

7. Warranty. Vendor warrants for a period of 12 months following start of use or 18 months from receipt, whichever occurs first, that the goods described herein will be free of defects in workmanship, design, materials, and title, and notwithstanding anything herein to the contrary, will conform to all applicable proposals, specifications, instructions, drawings, data, descriptions, and samples, and will be of good and merchantable quality and fit and sufficient for the purpose intended. Vendor shall obtain and provide to CITY Material Safety Data Sheets (MSDS) for each product that contains hazardous substances as defined by CalOSHA. ..

8. Rejection of Goods. CITY shall have the right, at its option, to reject or revoke acceptance of any goods which do not conform to these warranties or to the specifications. In case of such rejection or revocation of acceptance, transportation of the rejected goods, both to and from CITY, shall be at the expense of Vendor, said rejected goods are not to be replaced except upon specific instruction from CITY, and CITY shall have the right at its option to cancel the remainder, if any, of the order, by notice to Vendor at the time notice is given of rejection or revocation of acceptance. Vendor shall be liable to CITY for all damages proximately caused by breach of any of the foregoing warranties, including incidental damages but excluding special or consequential damages.

9. Returns. CITY reserves the right to return for full credit any excess over quantity called for in any order or orders. Vendor to bear the cost of transportation both ways.

10. Force Majeure. Vendor shall not be held responsible for failure or delay in shipping nor CITY for failure or delay in accepting goods described herein if such failure or delay is due to act of God, war, federal or state legislation or any regulations or orders, fire, accident, or other causes, either similar or dissimilar to the foregoing, beyond their control. In the event of any such excused interference with shipments, CITY shall have the option either to reduce the quantity provided for in the order accordingly or to exercise its right of cancellation as set forth in these terms and conditions.

11. Additional Fees. Unless otherwise required by law or provided herein, Vendor assumes exclusive liability for, and shall pay before delinquency, all sales, use, excise and other taxes, charges or contributions of any kind now or hereafter imposed on or with respect to, or measured by the article sold or material or work furnished hereunder on the wages, salaries or other remunerations paid to persons employed in connection with performance of this order.

12. No Waiver. No exercise by CITY of its rights hereunder shall constitute a waiver of any rights it may have for breach of contract. CITY's waiver of or failure to enforce its rights on account of Vendor's failure or delay in performing any obligation of Vendor hereunder, or on account of Vendor's breach of contract in any respect, shall not constitute a waiver of any subsequent failure, delay or breach.

13. Compliance with Law. Vendor shall comply with all applicable laws and regulations of the federal, state and local government. CITY shall assist Vendor, as requested, in obtaining and maintaining all permits required of Vendor by Federal, State and local regulatory agencies. Vendor is responsible for all costs of clean up and/or removal of hazardous and toxic substances spilled as a result of his or her Work. Vendor is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the Work is 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, Vendor agrees to fully comply with such Prevailing Wage Laws. Vendor shall defend, indemnify and hold 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. Any stop orders issued by the Department of Industrial

Relations against Vendor or any subcontractor that affect Vendor's performance of services, including any delay, shall be Vendor's sole responsibility and Vendor shall indemnify CITY from liability arising out of the same. It shall be mandatory upon the Vendor and all subcontractors 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), contractor registration (Labor Code Sections 1725.5 and 1771.1) and debarment of contractors and subcontractors (Labor Code Sections 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 and to be registered with the Department of Industrial Relations 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 1771.4, 1725.5 and 1771.1.

14. Insurance. Vendor shall take out and maintain: A. Commercial General Liability Insurance, of at least \$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury and property damage, at least as broad as Insurance Services Office Commercial General Liability most recent Occurrence Form CG 00 01; B. Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, of at least \$1,000,000 per accident for bodily injury and property damage, at least as broad as most recent Insurance Services Office Form Number CA 00 01 covering automobile liability, Code 1 (any auto); C. Workers' Compensation in compliance with applicable statutory requirements and Employer's Liability Coverage of at least \$1,000,000 per occurrence; and D. Pollution Liability Insurance of at least \$1,000,000 per occurrence and \$2,000,000 aggregate shall be provided by those Vendors transporting hazardous materials. Insurance carriers shall be licensed to do business in California and maintain an agent for process within the state. Such insurance carrier shall have not less than an "A:VII" rating according to the latest Best Key Rating unless otherwise approved by CITY. VENDOR SHALL ENSURE THAT THIRD PARTY SHIPPERS CONTRACTED BY VENDOR HAVE ADEQUATE INSURANCE COVERAGE. If attached, Vendor shall refer to Exhibit "A" – Insurance Requirements, for further insurance requirements applicable to Vendor.

15. Indemnification. The Vendor shall indemnify and hold harmless CITY, its officials, officers, agents and employees from and against any and all claims, liabilities, expenses or damages, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, or patent infringement or fees for use of patented items, or any claim of the Vendor or sub-contractors for wages or benefits which arise in connection with the sale, delivery and/or installation of equipment or materials, except to the extent caused or resulting from the negligence or willful misconduct of CITY. The foregoing indemnity includes, but is not limited to, the cost of prosecuting or defending such action with legal counsel acceptable to CITY and CITY's attorneys' fees incurred in such an action.

16. Substitutions, Changes and Cancellation. No substitutions are acceptable unless expressly accepted in writing by CITY. CITY may make changes in the general scope of this order by giving written notice to Vendor. If any such change affects the cost of or time to deliver or perform under this order, an adjustment in price, delivery or both will be made as CITY determines to be equitable. Vendor may request changes; however, no such change shall be effective

unless accepted in writing by CITY. CITY may cancel this order in whole or in part at any time before acceptance of the equipment and materials due to Vendor's breach or for CITY's convenience.

17. Laws, Venue, and Attorneys' Fees. This purchase order 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 purchase order, the action shall be brought in a state or federal court situated in the County of Santa Clara, State of California. In the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorney's fees, as determined by the court.

18. Contract Terms. Nothing herein shall be construed to give any rights or benefits to anyone other than CITY and the Vendor. The unenforceability, invalidity or illegality of any provision(s) of this purchase order shall not render the other provisions unenforceable, invalid or illegal. Notice may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to the parties to the addresses set forth in the purchase order. Vendor shall not assign, sublet, or transfer this purchase order, or any rights under or interest in this purchase order, without the written consent of CITY, which may be withheld for any reason. Vendor is retained as an independent contractor and is not an employee of CITY. No employee or agent of Vendor shall become an employee of CITY. This is an integrated agreement/purchase order representing the entire understanding of the parties as to those matters contained herein, and supersedes and cancels any prior oral or written understanding or representations with respect to matters covered hereunder. This Contract may not be modified or altered except in writing signed by both parties hereto.

19. Damage to City Facilities. Damage to CITY or public facilities or private property caused by the Vendor or by its subcontractors during delivery or installation shall be repaired and/or replaced in kind at no cost to the CITY.

20. Site Safety and Cleanup. The delivery and installation site shall be kept clean and free of hazards at all times during delivery and installation. After and installation is completed at the site, as applicable, Vendor shall clean the surrounding area to the condition prior to delivery and installation.

21. Installation. If the Vendor is responsible for providing installation services, finished installation work and/or equipment shall be subject to final inspection and acceptance or rejection by the CITY.

22. Wage Theft Prevention. Vendor, and any subcontractor it employs to complete work under this purchase order, 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. By entering into this purchase order, Vendor 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 the date of this purchase order that Vendor or its subcontractor(s) has violated any applicable wage and hour laws. Vendor 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, Vendor 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 Vendor or its subcontractor(s) are in compliance with

said plan as of the date of this purchase order. If at any time during the term of this purchase order, a court or investigatory government agency issues a final judgment, decision or order finding that Vendor or a subcontractor it employs to perform work under this purchase order has violated any applicable wage and hour law, or Vendor learns of such a judgment, decision, or order that was not previously disclosed in its bid/proposal, Vendor 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. Vendor 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 Vendor or its subcontractor is subject to a payment or other alternative plan, the Vendor or its subcontractor shall continue to submit documentary evidence every thirty (30) calendar days during the term of the purchase order demonstrating continued compliance with the plan until the judgment, decision or order has been fully satisfied. For purposes of this provision, 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. Failure to comply with any part of this provision constitutes a material breach of this purchase order. Such breach may serve as a basis for immediate termination of this purchase order and/or any other remedies available under this purchase order and/or law. Notice provided to the CITY shall be addressed to: Attention: Finance Director, 455 E. Calaveras Blvd., Milpitas, CA 95035. The notice provisions of this paragraph are separate from any other notice provisions in this purchase order and, accordingly, only notice provided to the above address satisfies the notice requirements in this provision.

***OPTIONAL TERMS:** Check box if applicable

- ☐ Custom Design: If the goods are produced by Vendor in accordance with designs, drawings or blueprints provided by CITY, Vendor shall return same to CITY upon completion or cancellation of this order. Any materials, equipment, tools, artwork, designs or other property furnished by or specifically paid for by CITY shall be CITY's property.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve and Authorize the City Manager to Execute the Five-Year General Services Agreement with Aramark Uniform Service for Citywide Uniform, Mat, and Linen Services for the not-to-exceed amount of \$240,916.30 (Staff Contact: Chris Schroeder, Purchasing Agent, 408-586-3161)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	9/20/2022
	<u>Recommendation:</u> Approve and authorize the City Manager to execute the five-year General Services Agreement with Aramark Uniform Service for Citywide Uniform, Mat, and Linen Services for the not-to-exceed amount of \$240,916.30

BACKGROUND:

The City's current general services agreement for uniform and floor mat service with Unifirst Corporation will expire on November 6, 2022, and a new agreement is required for the continuation of services. The City has historically contracted for these services through a number of iterations. After the expiration of the current agreement for services, the scope of work was revised to better state the City's desired services and service levels.

Per the labor agreement between the Milpitas Employee Association and the City of Milpitas, the City is required to provide uniform work clothes for employees who are required to wear uniforms on a daily basis. Uniforms are to identify City employees when they are performing work throughout the city.

Uniforms are currently being provided for approximately 70 employees in the Public Works and Finance departments. The uniforms consist of shirts, pants, and coveralls, depending upon the need of the particular employee or employee classification. Uniforms are turned in on a weekly basis for laundering and repairs and/or replacement as deemed necessary by the vendor or as requested by the department. Additionally, the current contract includes mat and linen services at 13 City facilities.

ANALYSIS:

On July 1, 2022 the City's Purchasing Division released RFP No. 22-104 for Citywide Uniform, Mat, and Linen Services. The RFP outlined the City's needs for uniforms for employees, a variety of linen and towel services at multiple city facilities as well as floor mats.

The RFP was publicly noticed in accordance with the City's Municipal Code, advertised on the City's website, emailed to companies registered with the City via Procurement and through OpenGov.com, the City's eProcurement system. Additionally, the RFP was published on the City's website.

Upon release, 434 firms were notified of the bid opportunity and 13 firms downloaded the RFP documents. Two addenda were issued, and one clarifying question was answered by City staff. Of the firms that downloaded the bid documents, one (1) firm responded to the RFP by the published closing date of August 4, 2022. The bid received was reviewed by Purchasing staff for compliance and responsiveness and was accepted.

The companies that continued in the evaluation process were:

1. Aramark Uniform Services

The evaluation committee reviewed proposals based on the following criteria:

1. Cover letter and Compliance with RFP Requirements
2. Personnel Assigned

3. References
4. Execution Plan for Services
5. Company Profile
6. Proposed Compensation

After an initial evaluation by four City staff members who comprised the evaluation committee, Aramark was invited to and attended an interview to gather further information regarding their proposals and offer the evaluation committee the opportunity to ask clarifying questions before forwarding a recommendation for award to the City Council. Interviews were held at the Department of Public Works on August 25, 2022. Additionally, the Aramark proposal included customers that are public agencies with operational services comparable to the City.

The table below shows the final evaluation scores with the recommended firm highlighted in green:

Citywide Uniform, Mat, and Linen Services RFP No. 22-104	Aramark Uniform Services
Final Evaluation Score	76.13

Aramark will provide weekly servicing and laundering services for the City's uniforms, linens, towels, and mats via their Hayward offices. Aramark utilizes commercial facilities which are able to recycle the water used at their plant. The laundering detergent is also environmentally friendly, using Ecolab laundry products. The products that Aramark utilizes in their operations meet the requirements of being nonylphenol ethoxylates free (NPE free) and phosphate free, an industry-wide sustainability benchmark for industrial laundry products.

POLICY ALTERNATIVE(S):

Alternative 1: Do not award RFP No. 22-104 to Aramark Uniform Services for Citywide Uniform, Mat, and Linen Services.

Pros: None.

Cons: The City would not commit to the five-year delivery of these union required services for multiple departments including, Fire, Police, Public Works, Finance, among others.

Reason not recommended: The City is required to provide uniform services for a number of its field employees as well as towel and linen services. Floor mats also provide additional safety when entering and traveling in City facilities during wet weather.

FISCAL IMPACT:

Funding for this agreement is available in the various department's operating budget for FY2022-23 and future year appropriations will be a part of the budget development.

California Environmental Quality Act (CEQA):

Not applicable. The selection and contractual arrangement do not constitute a project, in accordance with Section 15378 of the CEQA Guidelines.

RECOMMENDATION:

Award RFP No. 22-104 and Authorize the City Manager to execute the general services agreement with Aramark Uniform Services to provide Citywide Uniform, Mat, and Linen services.

Attachment(s):

1. General Services Agreement with Aramark Uniform Services

CITY OF MILPITAS
AGREEMENT FOR CITYWIDE UNIFORM, MAT, AND LINEN SERVICES

1. PARTIES AND DATE.

This Agreement for **CITYWIDE UNIFORM, MAT, AND LINEN SERVICES** ("Agreement") entered into this _____ by and between the City of Milpitas, a municipal corporation organized under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 ("City") and **ARAMARK Uniform & Career Apparel Group, Inc. dba ARAMARK UNIFORM AND CAREER APPAREL, LLC**, a corporation, with its principal place of business at **31148 San Antonio Street, Hayward, CA 94544** ("Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

2. RECITALS.

2.1 Contractor.

Contractor desires to perform and assume responsibility for the provision of certain **CITYWIDE UNIFORM, MAT, AND LINEN SERVICES** required by City on the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in providing **CITYWIDE UNIFORM, MAT, AND LINEN SERVICES** to public clients, is licensed in the State of California, and is familiar with the plans of City.

2.2 Project.

City desires to engage Contractor to render such services for the **CITYWIDE UNIFORM, MAT, AND LINEN SERVICES – No. 22-104** project ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Contractor promises and agrees to furnish to City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the services and advice on various issues affecting the decisions of City regarding the Project and on other programs and matters affecting City ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term or Time of Performance.

The term of this Agreement shall be from **November 7, 2022** to **November 6, 2027**, 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.

3.2 Responsibilities of Contractor.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Contractor or under its supervision. Contractor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Contractor on an independent contractor basis and not as an employee of City. Contractor retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Contractor shall also not be employees of City and shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Contractor shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Contractor represents that it has the skilled personnel required to perform the Services in conformance with such conditions. In order to facilitate Contractor's conformance with the Schedule, City shall respond to Contractor's submittals in a timely manner. Upon request of City, Contractor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Contractor shall be subject to the approval of City.

3.2.4 Substitution of Key Personnel. Contractor has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Contractor may substitute other personnel of at least equal competence and experience upon written approval of City. In the event that City and Contractor cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to City, or who are determined by City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by Contractor at the request of City. The key personnel for performance of this Agreement are as follows: **Carmelo Colon**

3.2.5 City's Representative. City hereby designates Chris Schroeder, Purchasing Agent, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of City for all purposes under this Agreement. Contractor shall not accept direction or orders from any person other than City's Representative or his or her designee.

3.2.6 Contractor's Representative. Contractor hereby designates Carmelo Colon, Regional Account Executive, or his or her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of Contractor for all purposes under this Agreement. Contractor's Representative shall supervise and direct the Services, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Contractor agrees to work closely with City staff in the performance of Services and shall be available to City's staff, contractors and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Contractor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by contractors in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the calling necessary to perform the Services. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including any required business license, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Contractor shall perform, at its own cost and expense and without reimbursement from City, any services necessary to correct errors or omissions which are caused by Contractor's failure to comply with the standard of care provided for herein, and shall be fully responsible to City for all damages and other liabilities provided for in the indemnification provisions of this Agreement arising from the Contractor's errors and omissions.. Any employee of Contractor or its subcontractors who is determined by City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to City, shall be promptly removed from the Project by Contractor and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to City, Contractor shall be solely responsible for all costs arising therefrom. Contractor shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10 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.

3.2.11 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices,

equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.3 Fees and Payments.

3.3.1 Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed **TWO HUNDRED FORTY THOUSAND NINE HUNDRED SIXTEEN DOLLARS AND THIRTY CENTS (\$240,916.30)** without written approval of City's City Manager or their designee. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Contractor shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Contractor. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within forty-five (45) days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Contractor shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Contractor perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Contractor shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

3.3.5 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 \$1,000 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 subcontractors 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 subcontractors 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 subcontractors, 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.

3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred and fees charged under this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.5 General Provisions.

3.5.1 Termination of Agreement.

(a) Grounds for Termination. City may, by written notice to Contractor, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Contractor of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those services which have been fully and adequately rendered to City through the effective date of the termination, and Contractor shall be entitled to no further compensation. Contractor may not terminate this Agreement except for cause.

(b) Effect of Termination. If this Agreement is terminated as provided herein, City may require Contractor to provide all finished or unfinished Documents and Data, as defined below, and other information of any kind prepared by Contractor in connection with the performance of Services under this Agreement. Contractor shall be required to provide such document and other information within fifteen (15) days of the request.

(c) Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 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:

Contractor:

Aramark Uniform Services
31148 San Antonio Street
Hayward, CA 94544
Attn: Carmelo Colon

City:

City of Milpitas
455 E. Calaveras Boulevard
Milpitas, California 95035
Attn: Purchasing Agent

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

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

3.5.4 Attorneys' Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and all costs of such action.

3.5.5 Indemnification. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold 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, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged negligent acts, omissions or willful misconduct of Contractor, its officials, officers, employees, agents, subcontractors and subcontractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all consequential damages, attorneys' fees and other related costs and expenses. Contractor shall defend, at Contractor's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its officials, officers, employees, agents or volunteers. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Contractor shall reimburse City and its officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs, including reasonable attorneys' fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by City or its officials, officers, employees, agents or volunteers. This Section 3.5.5 shall survive any expiration or termination of this Agreement.

3.5.6 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be supplemented, amended or modified by a writing signed by both Parties.

3.5.7 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Santa Clara County.

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

3.5.9 City's Right to Employ Other Contractors. City reserves the right to employ other Contractors in connection with this Project.

3.5.10 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.11 Assignment or Transfer. Contractor shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

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

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

3.5.14 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

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

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

3.5.17 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 member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.18 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. 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. Contractor shall also comply with all relevant provisions of any minority business enterprise program, affirmative action plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.19 Labor Certification. By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5.20 Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.21 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.5.22 Employment Adverse to City. Contractor shall notify City, and shall obtain City's written consent, prior to accepting work to assist with or participate in a third-party lawsuit or other legal or administrative proceeding against City during the term of this Agreement.

3.5.23 Conflict of Employment. Employment by Contractor of personnel currently on the payroll of City shall not be permitted in the performance of this Agreement, even though such employment may occur outside of the employee's regular working hours or on weekends, holidays or vacation time. Further, the employment by Contractor of personnel who have been on City's payroll within one year prior to the date of execution of this Agreement, where this employment is caused by and or dependent upon Contractor securing this or related Agreements with City, is prohibited.

3.5.24 Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification and confidentiality obligations, and the obligations related to receipt of subpoenas or court orders, shall survive any such expiration or termination.

3.5.25 Subcontracting. Contractor shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.5.26 Wage Theft Prevention

(a) Contractor, and any subcontractor 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 subcontractor 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 subcontractor(s) shall, within thirty (30) calendar days after notifying the City, either (i) fully satisfy any such judgment, decision, or order and provide the City with documentary evidence of satisfying said judgment, decision or order; or (ii) provide the City documentary evidence of a payment or other alternative plan approved by the court/government agency to satisfy the judgment, decision or order. If the Contractor or its subcontractor is subject to a payment or other alternative plan, the Contractor or its subcontractor shall continue to submit documentary evidence every thirty (30) calendar days during the term of the 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 AGREEMENT
FOR Citywide Uniform, Mat, and Linen SERVICES
BETWEEN THE CITY OF MILPITAS
AND ARAMARK UNIFORM SERVICES**

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

CITY OF MILPITAS*Approved By:*

 Steven G. McHarris, City Manager

 Date
Approved:

 Lauren Lai, CPA, MPA
 Finance Director/Risk manager
Approved As To Form:

 Michael Mutalipassi, City Attorney
Approved As To Content:

 Chris Schroeder
 Purchasing Agent
ARAMARK UNIFORM SERVICES

 Signature

 Name

 Title

 Date

EXHIBIT "A"

SCOPE OF SERVICES

1 The Contractor shall provide weekly rental, maintenance and laundry services of work related garments, for the City of Milpitas' various departments and/or divisions listed in this attachment. Items to be furnished include, but are not limited to, shirts, pants, coveralls, aprons, towels, mats/rugs and similar items, and the laundering, repair, and/or replacement of these items. Clothing shall be delivered to the locations designated, laundered and maintained in good condition and repair, in accordance with these specifications. All uniforms shall be placed on hangers unless Department Contact makes other arrangements.

2 Initial Issue of Uniforms

2.1 *At the commencement of the contract, the Contractor shall issue new, unwashed and unworn uniforms and other garments prior to the start of this agreement.*

2.2 *The Contractor shall provide each employee with up to nine (9) sets of uniforms unless otherwise designated by the Department contact. A uniform may consist of work shirt (short or long sleeve) pants or shorts,*

2.2.1 *Aprons and/or coveralls shall be in addition to the uniform requirement and vary between job function and department.*

2.3 *During the Contract period, the Contractor shall maintain sufficient stock to provide complete uniforms and other items within seven (7) working days to employee hired. In addition, the Contractor shall have loaners available during these seven (7) days. All such garments shall be new.*

3 Charge

3.1 *Pick-up and delivery charge, if any, shall be included in the unit bid price. Bid prices represent the cost for: Garment for City designated employees; the laundering of such garments; the required changes per employee per week; other items such as mats, mops, towels etc.; the delivery and pick-up of said garments; and other requirements listed and the Contractors Responsibilities of this contract.*

3.2 *The contractor shall submit "replacement cost" detailing charges for lost or damaged uniforms with bid on the Exhibit C - Bid Pricing Form (excessive charge(s) may be a cause for rejection of bid). The Contractor's price shall be set at per unit cost, without increased variance in cost due to choices in change of garment. Charges not allowed include: extra-suit charges, prep-charges, and emblem mounting or cleaning charge, buyback costs or charges for large sizes or*

hemming or other alterations needed for proper fitting uniforms.

4 Measurement, Fit, Colors and Emblems (patches)

4.1 *The Contractor shall be responsible for individual measurement and resultant fit of all garments provided, to include changed size requirement of individual which shall occur within five (5) working days from the date of request, and shall provide the employee with uniforms within ten (10) working days of the date measured.*

4.2 *Any tailoring required to assure proper fit for each individual shall be done at no additional cost to the City. When the Contractor is measuring division personnel for uniforms, the Contractor shall have samples of each type of uniform in various sizes available for Division personnel to try on.*

4.3 *Colors of uniform items shall be as designated by the City's Purchasing Agent and selected from manufacturer's standard colors which shall include international orange.*

4.4 *The Contractor shall provide name patches with either the employee's first name, or both first and last name depending on the department/division's request. The background of the patch shall be white in color. The Contractor shall adhere by sewing outside perimeter of patch to shirts at no cost to the City. Name patches shall be located over the left shirt pocket.*

4.5 *The Contractor shall provide a patch with the color City of Milpitas seal and the verbiage "CITY OF MILPITAS" to the left of the seal. The background of the patch shall be white in color. The Contractor shall adhere by sewing outside perimeter of patch to shirts at no cost to the City. City Seal patches shall be located over the right shirt pocket.*

5 **Identification System:** The Contractor shall provide a clean and inconspicuously marked or labeled identification system that identifies each employee and garment to ensure that employees get the same garment after cleaning.

6 Description of Clothing

6.1 *Coveralls are long sleeved, one-piece coveralls, bi-swing back, and zipper front, cuff-less in a blend of 65% polyester and 35% cotton, plain twill, 7-8 oz. per square yard, with heavy-duty full-length two-way brass zipper with gripper at neck, fly front or 100% cotton with buttons. Two breast pockets, two slash style, front pockets and two rear hip pockets. All stitching with polyester thread, double stitched seams and bar tacked for reinforcement at points of strain. Must be available in all sizes at no additional cost, color as selected from manufacturer's standard colors including international orange at no additional cost.*

6.2 *Pants will be slack type, work type or jean cut, plain front, with no cuff. 65% Dacron polyester and 35% cotton, or 100% cotton work, fabric vats dyed, sun fade and acid resistant. Permanent press finish, 7-8 oz. per square yard. Color to be selected from manufacturer's standard colors. 100 % spun polyester or cotton coated polyester thread in matching colors with 8 to 12 stitches per inch. Bar tacked at points of strain. Pants shall have full cut for roomy fit, button closure at waist, heavy duty taped brass zipper and inner lined waistband with belt loops.*

Pants shall have two inserts, slack style front pockets and two inset hip pockets. Triple- stitched, feld-locked outer seams, and permanent creases. Pants must be available in both men and women styles and in all sizes at no additional cost. Pants color shall be selected from manufacturer's standard colors at no additional cost.

6.3 *Shorts will be slack type, plain front, with no cuff. 65% Dacron polyester and 35% cotton, or 100% cotton work, fabric vats dyed, sun fade and acid resistant. Permanent press finish, 7-8 oz. per square yard. Color to be selected from manufacturer's standard colors. 100 % spun polyester or cotton coated polyester thread in matching colors with 8 to 12 stitches per inch. Bar tacked at points of strain. Pants shall have full cut for roomy fit, button closure at waist, heavy duty taped brass zipper and inner lined waistband with belt loops. Shorts shall have two inserts, slack style front pockets and two inset hip pockets. Triple- stitched, feld-locked outer seams, and permanent creases. Shorts must be available in both men and women styles and in all sizes at no additional cost. Shorts color shall be selected from manufacturer's standard colors at no additional cost.*

6.4 *Shirts shall be two-patch spade style or die cut round, breast pocket of shirt fabric, each with button and vertical buttonhole, no metal snaps. 65% Polyester, 35% cotton work or Cotton Dura or Indura soft. Two pockets with button closure flap. Two-piece lined button closure cuff and lined two-piece banded collar. Must be available in both men and women styles and in all sizes at no additional cost. Shirts color shall be selected from manufacturer's standard colors at no additional cost.*

7 Pick-up and Delivery Specifications

7.1 *For clothing items, the Contractor shall collect and make delivery at least once per week to each of the departments/divisions listed in Exhibit D for clothing items. For all other items, the Contractor shall collect and make regular delivery based on the schedule determined by the Purchasing Agent or their designee.*

7.2 *The Contractor shall be responsible for equivalent replacement and cost of any garment(s) that are lost or damaged while in the possession of the Contractor between points of pick-up to point of delivery.*

7.3 *Currently there are 13 service locations throughout the City. The City reserves the option to relocate, reduce or increase pick-up and delivery points at no additional cost to the City.*

7.4 *The department pick-up/delivery location(s) of each department included in the contract listed in City of Milpitas Service Locations.*

8 Startup Requirements

8.1 *The Contractor shall provide each employee with up to nine (9) sets of uniforms unless otherwise notified by Department Contact. Uniforms shall consist of a work shirt and work pants, or shorts. One (1) uniform will be worn, four (4) will be sent in for laundry, and four (4) will be clean and available at the work site.*

8.2 *The Quantities of uniforms required for "startup" are indicated in Exhibit C – Bid Pricing Form. The Contractor shall include the "startup" cost with its price submission and shall not charge*

the City with “startup” cost.

8.3 The Contractor shall provide new garments (Grade A) upon initial inventory for existing permanent or temporary employees, and any new/additional permanent City employees thereafter regardless of hire date. All garments for permanent and temporary/seasonal employees must have the employee's standard cloth nametags affixed to the garment as designated by the Purchasing Agent from date of issue. In addition, patches detailed in Section 4.4 and Section 4.5 shall be approved by the Purchasing Agent and shall be provided and attached to the garment(s) when required, at no additional cost to the City.

8.4 The Contractor shall provide qualified personnel to measure and fit on-site for the initial order and all added users. Two (2) on-site fittings shall occur at a mutually agreeable time and date between the Contractor and the Purchasing Agent at the City of Milpitas Corp Yard located at 1265 N. Milpitas Boulevard. The Contractor shall provide various sizes to individuals and any oversized garments required at no additional cost to the City. Each garment shall be fitted to the satisfaction of the individual employee. In addition, fittings and alterations shall be taken on-site throughout the term of the contract, when necessary. When questions such as proper fit arise, the Contractor shall follow the City's representative's decision and make changes accordingly.

8.5 The Contractor shall designate an account manager and maintain sufficient staff and facilities to properly and adequately perform all services requested under the contract and all related issues.

8.6 Prior to the sizing of garments, the Contractor shall confer with and advise the Purchasing Agent or their designee on garment tag information.

8.7 The Contractor shall be responsible for identifying and accounting for each garment, ensuring that garments picked up from a specific area are returned to the same area and the same user.

8.8 The Contractor shall maintain an inventory for the designated amount of garments authorized by the City representative for each employee by department and division.

8.9 The Contractor shall deliver all garments in wearable (wrinkle-free) condition for placement in the designated areas. No starch or similar product shall be used. If the Contractor delivers any items to the wrong location and the garment(s) are not recovered at its original location; the Contractor is responsible for its replacement.

8.10 The Contractor shall provide garment dispensers and/or clothing bins and portable garment rack to requesting departments, as well as the delivery of clean garments and removal of soiled garments from bins, all at no additional cost to the City.

8.11 The City requires a minimum of once a week pickups and a one-week turn-around time on delivery, every week. Contractor shall schedule City's service day for Tuesday, Wednesday or Thursday (excluding Holidays). Normal hours for pickup and delivery are between 7:00 a.m. and 4:00 p.m. unless otherwise agreed upon by the Contractor and Department/Division Contact. The Contractor shall make an agreed upon holiday delivery schedule at least one week prior to the holiday with each City Department representative to maintain the weekly pick-up and delivery schedule.

8.12 The Contractor shall be responsible to replace the rented items that are damaged, worn out, or can no longer be worn. The Contractor shall inspect and identify garments that need

to be replaced on site, provide an estimate of cost and obtain an approval from the Department representative before taking any damaged garments off site. The City shall not be responsible for any garment replacement charges not approved by the Purchasing Agent and/or Department's representative.

8.13 Any garment requiring replacement shall be replaced within seven (7) calendar days.

8.14 The Contractor shall have adequate quality control to ensure that all broken button, broken zippers, torn or stained uniforms, or other defects are corrected, or the garment replaced before delivery. Uniforms worn or otherwise unsuitable for service shall be replaced as a routine matter.

8.15 The Contractor shall identify damaged or un-cleanable units before the units are returned to the City department on the following delivery date. Replacement garments shall be new, unwashed, and unworn. The City shall refuse payment for garments that do not present a satisfactory appearance to wear in public. In addition, incorrect counts and items with inappropriate markings must be rectified within one week of the error. Otherwise, garments shall be replaced/upgraded due to normal wear and tear during the duration of the contract, with new garments at no additional cost to the City.

8.16 If garments need repair, the Contractor shall provide repair tags for City employees and provide a separate bin and marked as such for garments that need repair in each pick-up and delivery location.

8.17 All repairs shall be done with "like" materials to all garments including zipper replacement and broken, bent or missing buttons of equivalent quality.

8.18 The Contractor shall make all repairs to the satisfaction of the City's Department Representatives. Repairs shall be identified with a "No Charge" repair tab placed on the garment(s).

8.19 The Lost Replacement Rate shall remain firm for the duration of the contract. The company's quality control specifications and procedures pertaining to all garment and laundry services shall be provided under this contract. Said garments and services specifications include: Wear and Tear policy, Upgrading and Replacement policy.

9 Performance

9.1 In the event the Contractor fails to perform satisfactory service under the terms of the contract, the City may issue the Contractor a written notice of unsatisfactory performance and the Contractor shall improve its performance within thirty (30) days after receiving such notice from the City. The City may at its sole discretion terminate the contract. Termination of the contract for unsatisfactory performance shall relieve the City of all further obligation to the Contractor with the exception of returning all issued garments and linen items belong to the Contractor. No payment of money made to the Contractor by the City shall be construed as a waiver of any right of the City under the Contract.

9.2 Factors which may be used to determine the Contractor's performance level include

but are not limited to:

- 9.2.1** Initial issue of uniforms and other items
- 9.2.2** New or additional employees
- 9.2.3** Measurement, fit colors and emblems
- 9.2.4** Inventory changes and items
- 9.2.5** Marking/ identification procedures
- 9.2.6** Delivery concerns
- 9.2.7** Quality control
- 9.2.8** Pricing adherence
- 9.2.9** Invoicing, excessive, or incorrect charges on statements

10 Compensation

10.1 *Calculations for Adds/Deletes, etc.*

- 10.1.1** For items increased or decreased, added or deleted, charges shall be adjusted by multiplying the unit price of the item involved by the number of such units added or decreased, the result to be added to or subtracted from the total charges. In all cases, charges to the City shall represent only the items and numbers of items actually used.

11 Replacement/Loss Charges

11.1 *If items are lost or destroyed by the City employees, The Contractor shall use the "replacement cost" charge shown in Attachment C - Bid Pricing Form for garments in service up to one (1) year. For garments in service more than one (1) year, but less than two (2) years, the charge shall be fifty percent (50%) of the "replacement cost" charge quoted. For garments in service two (2) years or more, there shall be no charge. The Contractor shall be responsible to determine the length of time a garment has been in service when verification is requested by the City.*

12 Absences

12.1 *Employees on extended absence or leave from the City, or whose employment is terminated, will return all uniforms and all charges shall be eliminated for that employee during such absence.*

13 Invoices and Statements

13.1 *A Citywide open purchase order will be issued for all City departments by division using the Contractor's services.*

13.2 *The City requires a separate invoice for each division and/or department; the invoices/summary statement shall be mailed at the end of each month to the Billing contact of each using department along with the individual delivery receipts/packing slips for items supplied during that month. The City will provide a list of division/department contacts with billing addresses to the Successful Bidder.*

13.3 *The statement will be paid after all receipts/packing slips are checked for accuracy against the summary statement. Discrepancies that cannot be resolved will not be paid and should be reflected on the next month's statement as a balance forward.*

13.4 *All invoice charges must be aggregated such that users receive the contract rate and services. All discounts and credits shall be clearly shown on the face of the invoice.*

13.5 *All billing corrections and/or credits shall be shown on the face of the invoice the week after Contractor is notified of the correction and/or credit by the City.*

14 Transition Plan

14.1 *The Contractor must include a description of its proposed transition plan that would ensure a smooth transition for uniform rental and laundry services from the current service provider with its bid submission. Bidder's transition plan shall be separate from the other items in the Proposer's bid packet and shall be in PDF form only.*

14.2 *The implementation schedule must detail all phases, dates, milestones and locations (locations provided by the City) to complete service transition by November 8, 2022 with minimal disruption to City departments. The actual date period of the implementation schedule submitted may be adjusted in accordance to an agreed start date of the new contract.*

14.3 *The Contractor's transition plan elements shall include, but not be limited to:*

14.3.1 Create data base for City Departments

14.3.2 Meet with Departments and determine garment requirements (size and type) of City employees

14.3.3 Forecast/order/ship "new" products

14.3.4 Prepare necessary routing, set up delivery schedules and invoicing procedures

14.3.5 Timeline of conducting garments installation for all locations

14.3.6 Audit installations, identify open issues

14.3.7 Allow for two (2) separate days for City staff to place orders, try on samples, confirm orders, etc. with successful firm to provide all staff, support, supplies and equipment necessary for such tasks to be accomplished. City will direct vendor as to

location upon award and confirmation of dates.

14.3.8 Provide a definitive deadline for completed delivery of samples of specialty garments for City Department ordering within the prescribed implementation process period.

15 The Contractor shall be responsible for all charges to obtain permits and/or licenses necessary to perform required services at no cost to the City.

16 Contractor shall perform preventative maintenance and requested repairs in a professional manner conforming to generally accepted industry standards. City must report any problems, defects and/or deficiencies with any repair within five (5) calendar days of performance of the service. In the event Contractor receives such notice from City, then Contractor shall re-perform the repair service at no cost to the City.

17 City acknowledges and agrees the Contractor SHALL NOT disclose City's name on Contractor's client lists and other promotional material without prior written consent from City.

18 City holidays change each year, **IT IS THE RESPONSIBILITY OF THE SUCCESSFUL BIDDER TO ENSURE SMOOTH AND COMPLETE DELIVERY OF ALL SERVICES EACH WEEK REGARDLESS OF CITY'S HOLIDAY CLOSURES.** No services shall be attempted on City Holidays. Below is a sample of the City's 2022 holiday schedule for reference only.

2022 DATES HOLIDAY

December 31 New Year's Day Holiday observed
January 17 Martin Luther King Jr.'s Birthday
February 11 Lincoln's Birthday Observed (MEA only)
February 21 Presidents Day
March 31 Cesar Chavez Day (IAFF, POA, MidCon, ProTech & Unrep only)
May 30 Memorial Day
July 4 Independence Day
September 5 Labor Day
November 11 Veteran's Day
November 24-25 Thanksgiving Holiday
December 23 Christmas Eve Holiday observed
December 25 Christmas Holiday observed

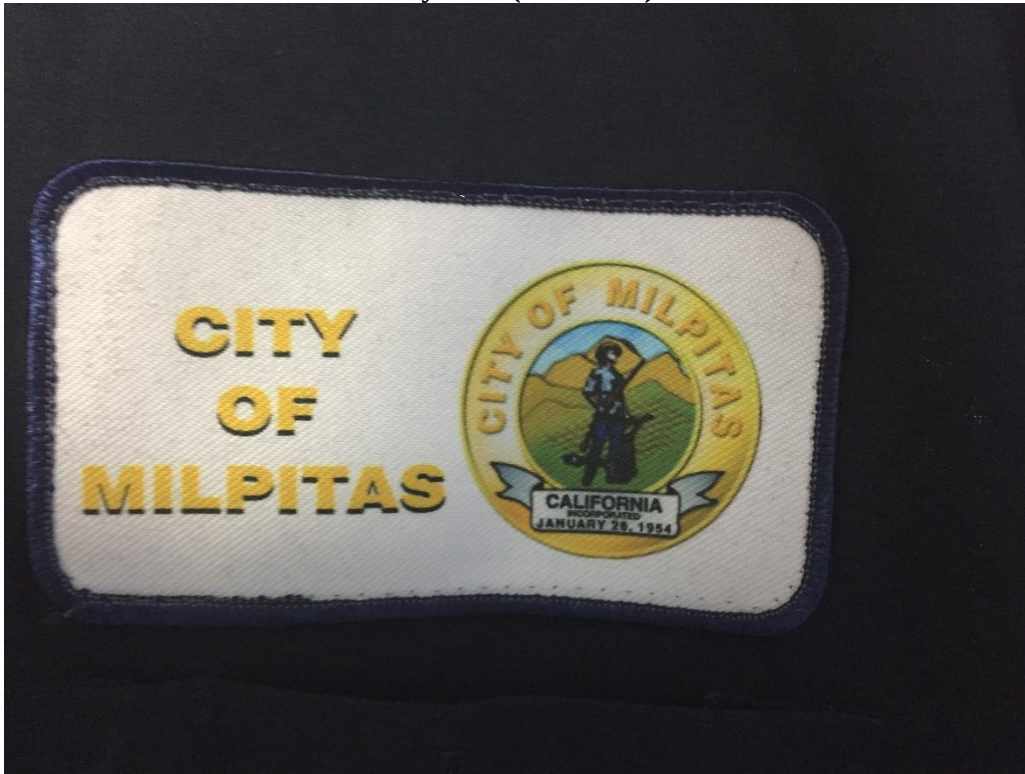
19 City of Milpitas Service Locations

Note: Some locations may have multiple locations requiring services. Successful Bidder and City to review and agree upon suitable number of stops and/or service locations prior to the commencement of services.

1. City Hall - 455 E. Calaveras Blvd.
2. Sal Cracolice Recreation Facility – 791 Garden Ct.
3. Sports Center – 1325 E. Calaveras Blvd.
4. Barbara Lee Senior Center – 40 N. Milpitas Blvd.
5. Community Center – 457 E. Calaveras Blvd.
6. Police Department – 1275 N. Milpitas Blvd.
7. Public Works (Admin) 1265 N. Milpitas Blvd.
8. Public Works (Corp Yard) 1265 N. Milpitas Blvd.
9. Public Works (Fleet) 1265 N. Milpitas Blvd.
10. Fire Station #1 – 777 S. Main St.
11. Fire Station #2 – 1263 Yosemite Dr.
12. Fire Station #3 – 45 Midwick Dr.
13. Fire Station #4 – 775 Barber Ln.

20 Sample Patches (continued on following page)

City Seal (Left Side)



Name (Right Side)



Exhibit "B"
Schedule of Services

Date	Item
25 August 2022	Notice of Intent to Award
31 August 2022	Fitting Day No. 1
1 September 2022	Fitting Day No. 2
6 September 2022	City Council Date for Formal AWARD
31 October 2022	Delivery of Uniforms for Following Week, Begin collecting of outgoing vendor materials
7 November 2022*	Services Start, continued assistance with outgoing vendors materials until complete*
14 November 2022	Services fully transitions and outgoing vendor materials returned

*Note: City of Milpitas requesting hand sort of materials for first two weeks to ensure maximum capture of outgoing vendor materials

On-going Services

- For clothing items, the Contractor shall collect and make delivery at least once per week to each of the departments/divisions listed in Exhibit D for clothing items. For all other items, the Contractor shall collect and make regular delivery based on the schedule determined by the Purchasing Agent or their designee.
- The Contractor shall be responsible for equivalent replacement and cost of any garment(s) that are lost or damaged while in the possession of the Contractor between points of pick-up to point of delivery.
- Currently there are 13 service locations throughout the City. The City reserves the option to relocate, reduce or increase pick-up and delivery points at no additional cost to the City.
- The department pick-up/delivery location(s) of each department included in the contract listed in City of Milpitas Service Locations.

EXHIBIT "C"
COMPENSATION

[BEGINS ON FOLLOWING PAGE]

EXHIBIT "D"**INSURANCE REQUIREMENTS**

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

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

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

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

Commercial General Liability (CGL):

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

 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), or if Contractor or Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than \$1,000,000.00 combined single limit for bodily injury and property damage.

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

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

Professional Liability (Errors and Omissions):

___ Insurance appropriate to the Contractor or Consultant's profession, with limit no less than \$1,000,000.00 per occurrence or claim, \$2,000,000.00 aggregate.

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

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

Workers' Compensation Insurance:

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

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

Builder's Risk (Course of Construction):

___ Insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions. If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

Contractor's or Consultant's Pollution Legal Liability:

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

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

Cyber Liability Insurance

___ Cyber Liability Insurance with limits not less than \$1,000,000 per claim.

Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor or Consultant in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, and network security.

The policy shall provide coverage for breach response costs as well as regulatory fines and penalties, and credit monitoring expenses with limits sufficient to respond to these obligations.

Surety Bonds:

Contractor shall provide the following Surety Bonds:

___ Bid Bond
 ___ Performance Bond
 ___ Payment Bond

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

Other Insurance Provisions:

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

X_ Additional Insured Status and Primary/Non-Contributory Language:

Contractor's general liability and automobile liability policies shall be primary and shall not seek contribution from the City's coverage and be endorsed to add the City and its 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 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.

 Notice of Cancellation, Suspension or Otherwise Voiding Policies:

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

X_ Waiver of Subrogation:

Contractor or Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor or Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Contractor or Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Contractor or Consultant, its employees, agents and subcontractors.

 Completed Operations

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

THE FOLLOWING PROVISIONS APPLY TO ALL AGREEMENTS

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

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

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

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

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

Acceptability of Insurers:

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

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

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

Subcontractors:

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

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

Verification of Coverage:

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

Special Risks or Circumstances

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

Failure to Comply:

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

Applicability of Coverage:

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



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Consider Sunnyhills Neighborhood Association Fee Waiver Request (Staff Contact: Renee Lorentzen, Director of Recreation and Community Services, 408-586-3409)
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	9/20/2022
	<u>Recommendation:</u> Approve a Fee Waiver of \$1,317 for the Sunnyhills Neighborhood Association Halloween Event scheduled for October 29, 2022.

BACKGROUND:

On September 6, 2022, Councilmember Dominguez with consensus of the Council, asked staff to return with the Fee Waiver request for the Sunnyhills Neighborhood Association's Halloween Event scheduled for October 29, 2022 at Sunnyhills Augustine Park.

ANALYSIS:

With staff guidance, Sunnyhills Neighborhood Association (Sunnyhills) submitted the required applications and documentation for the Halloween event which includes:

- Open Space Rental Application for Sunnyhills Augustine Park
- Special Event Permit Request and required attachments
- City Council Donation and Fee Waiver/Reduction Policy request

Sunnyhills is requesting that City Council waive eligible fees for the Open Space Rental, Special Event Permit and staffing in the amount of \$1,317. Fees ineligible for waiver include the open space rental application fee of \$31 and refundable security/damage deposit of \$1,000. Refundable security/damage deposits are refunded within 30 days of the rental.

Milpitas City Council adopted an updated "City Council Donation and Fee Waiver/Reduction Policy" on June 21, 2022. Per the policy, eligible organizations can request City fees to be waived up to \$1,500 or a donation amount up to \$500 to be granted upon request. Eligible organizations are defined as "a non-profit organization as described by the Internal Revenue Section such as 501(c)(3) or an intergovernmental agency; Non-discriminatory, and non-political in nature." Fee Waiver or Donation requests for events must provide a community benefit within the City of Milpitas proper. Applying organizations must provide proof of non-profit status from the federal Internal Revenue Service or the state Franchise Tax Board.

As required, the Sunnyhills Neighborhood Association provided a copy of its determination letter from the Internal Revenue Service stating it is a tax-exempt organization and meets the requirements as outlined in the Council adopted Fee Waiver Policy.

POLICY ALTERNATIVE(S):

Alternative: Do not approve the fee waiver as requested.

Pros: The City's General Fund will not incur the costs of the fees waived.

Con: Denial of the request may not allow the non-profit organization to hold the event at Augustine Park.

Reason not recommended: This request is consistent with the Council approved Policy.

FISCAL IMPACT:

\$25,000 was approved and included in the FY 2022-23 City budget for City Council's Unallocated Community Promotions. If this request is approved by City Council, then \$22,183 would remain in that line item of the current year's budget.

RECOMMENDATION:

Approve a Fee Waiver of \$1,317 for the Sunnyhills Neighborhood Association Halloween Event scheduled for October 29, 2022.

Attachment(s):

1. Application and Internal Revenue Service (IRS) non-profit letter
2. City Council Donation and Fee Waiver/Reduction Policy

CITY OF MILPITAS, CALIFORNIA
STANDARD OPERATING PROCEDURE

SUBJECT: CITY COUNCIL DONATION AND FEE WAIVER/REDUCTION POLICY

1. Purpose

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

2. Donation and Fee Waiver Budget

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

3. Requirements

- a) Any requests for donation or fee waiver/reduction must be submitted in writing using the attached application form.
- b) Requests for donations or fee waivers/reductions will be considered by the City Council during a regularly scheduled meeting.
- c) To be eligible, the organization must be a non-profit organization as described by the Internal Revenue Section such as 501(c)(3) or an intergovernmental agency. In either case, only events that provide community benefit within the City of Milpitas shall be eligible. If fund raising is involved, the organization must demonstrate that at least 60% of fund raised will be of general benefit to the Milpitas community. The organization must be non-discriminatory, and non-political in nature, based in Milpitas or have a local affiliation within the City.
- d) If the request for donation or fee waiver/reduction is for a community event, the event must be advertised, open to the public and no entrance fee shall be charged for the event.
- e) Fee waivers/reductions only apply to services provided by the City during its regular course of business. Such fees may include rental fees for the City's facilities or equipment, building permit fees or fire permit fees. Any City staff overtime costs required due to the event cannot be waived.
- f) The City Council may grant donation or fee waiver/reduction to each organization once annually, regardless of how many branches or affiliations it may have in the City.
- g) The fee waiver/reduction amount is further subject to \$1,500 maximum annually and the donation amount is subject to \$500 maximum annually for each organization. A fee waiver/reduction request cannot be combined with a donation request.
- h) To the extent possible, the City's contribution should be recognized in the event fliers and/or advertising.
- i) Within 60 days after completion of the event in which a donation was received or a fee waiver/reduction was granted by the City, the organization will provide a written report to the City Clerk to include at minimum: number of participants, copies of all publicity of the event, any benefit to the community, amount of funds raised and an accounting of how the proceeds of the event will be dispersed.
- j) Failure to abide by the rules and procedures as set forth in this document will result in the organization being denied for funding and/or fee waiver/reduction in the future.

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

Complete this form and return it to Milpitas City Clerk

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

Name of Organization: Sunnyhills Neighborhood Association

Is there a Milpitas branch or affiliation? YES

Mailing Address: 1421 Yellowston Ave., Milpitas, CA 95035-6913

Contact Person: Allysson McDonald Telephone No. 408-507-3913

Email Address: allyssonmcdonald@gmail.com

What is your request? Donation Amount Requested _____ OR

Fee Requested to be waived (type and \$ amount) \$1317 event permit fees and open space rental fee.

Event date(s): October 29, 2022

What is the purpose of the event? Neighborhood concert and Halloween party - to draw our community together and provide a safe alternative for children.

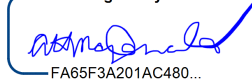
How will the Milpitas community benefit from this event? Up to 150 people will enjoy family time in the company of neighbors and friends., experiencing live music and a craft opprotunity. Participants will have an increased sense of community and a renewed neighborhood cohesiveness. This is so important after the isolation of the last 2 1/2 years.

What % of the fund raising proceeds will benefit Milpitas community? There is no fundraising associated with this event - there is no charge to attend and all activities and materials are free.

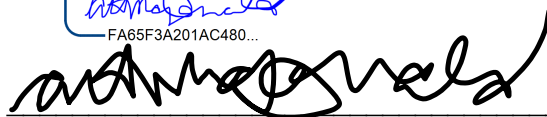
How will the City's contribution (if granted) be recognized in any publicity? The city will be acknowledged as a co-sponsor in our fliers and marketing and from the stage.

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

DocuSigned by:


 FA65F3A201AC480...

Signature of Officer:



Date: . 09/04/2022

Print Name & Title: Allysson McDonald, Sunnyhills Neighborhood Association President



CITY OF MILPITAS

Item # C14.

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.



Revision	Date
Original	04/21/2006
	6/21/2022

CITY COUNCIL DONATION AND FEE WAIVER/REDUCTION POLICY / POLICY #

- 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.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Consider Korean Language and Culture Foundation's Annual Korean Alphabet Event Donation Request (Staff Contact: Renee Lorentzen, Director of Recreation and Community Services, 408-586-3409)
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	9/20/2022
	<u>Recommendation:</u> Approve a Donation of \$500 for the Korean Language and Culture Foundation's annual Korean Alphabet Event scheduled for October 2, 2022.

BACKGROUND:

On September 13, 2022, staff received a Donation and Fee Waiver/Reduction Policy request from the Korean Language and Culture Foundation for their annual Korean Alphabet Celebration Event scheduled for October 2, 2022 at the Milpitas Library. The request is for a \$500 donation for the event.

ANALYSIS:

The Korean Language and Culture Foundation (Foundation) submitted the required application and documentation for the Korean Alphabet Celebration event which includes:

- City Council Donation and Fee Waiver/Reduction Policy request

The Foundation is requesting that City Council donate to the event in the amount of \$500.

Milpitas City Council adopted an updated "City Council Donation and Fee Waiver/Reduction Policy" on June 21, 2022. Per the policy, eligible organizations can request City fees to be waived up to \$1,500 or a donation amount up to \$500 to be granted upon request. Eligible organizations are defined as "a non-profit organization as described by the Internal Revenue Section such as 501(c)(3) or an intergovernmental agency; Non-discriminatory, and non-political in nature." Fee Waiver or Donation requests for events must provide a community benefit within the City of Milpitas proper. Applying organizations must provide proof of non-profit status from the federal Internal Revenue Service or the state Franchise Tax Board.

As required, the Korean Language and Culture Foundation provided a copy of its determination letter from the California Franchise Tax Board stating it is a tax-exempt organization and meets the requirements as outlined in the Council adopted Fee Waiver Policy.

POLICY ALTERNATIVE(S):

Alternative: Do not approve the fee waiver as requested.

Pros: The City's General Fund will not incur the costs of the fees waived.

Con: Denial of the request may not allow the non-profit organization to hold the event in the Council Chamber.

Reason not recommended: This request is consistent with the Council approved Policy.

FISCAL IMPACT:

\$25,000 was approved and included in the FY 2022-23 City budget for City Council's Unallocated Community Promotions. If this request is approved by City Council, then \$21,683 would remain in that line item of the current year's budget.

RECOMMENDATION:

Approve a Donation of \$500 for the Korean Language and Culture Foundation's annual Korean Alphabet Event scheduled for October 2, 2022.

Attachment(s):

1. Application and Franchise Tax Board non-profit letter
2. City Council Donation and Fee Waiver/Reduction Policy

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

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

Name of Organization: Korean Language and Culture Foundation

Is there a Milpitas branch or affiliation? Yes

Mailing Address: 800 S. Abel St. #525, Milpitas, CA 95035

Contact Person: Eun-Hee Koo Telephone No. 408-805-4554

Email Address: klacfsf@gmail.com

What is your request? Donation Amount Requested \$500.00 OR

Fee Requested to be waived (type and \$ amount) _____

Event date(s): October 2, 2022

What is the purpose of the event? To celebrate the 579th Korean Alphabet Day and let City of Milpitas citizens experience Korean culture

How will the Milpitas community benefit from this event? They will experience Korean culture including Korean traditional games, Korean custom and printing system.

What % of the fund raising proceeds will benefit Milpitas community? No fundraising event

How will the City's contribution (if granted) be recognized in any publicity? _____
It will be announced on the program and at the event.

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

Signature of Officer: 

Date: 9/7/2022

Print Name & Title: Eun-Hee Koo, Chairperson of Board of Directors



Entity Status Letter

Date: 9/13/2022

ESL ID: 1108521552

Why You Received This Letter

According to our records, the following entity information is true and accurate as of the date of this letter.

Entity ID: 3431277

Entity Name: KOREAN LANGUAGE AND CULTURE FOUNDATION.

- ☒ 1. The entity is in good standing with the Franchise Tax Board.
- ☐ 2. The entity is **not** in good standing with the Franchise Tax Board.
- ☒ 3. The entity is currently exempt from tax under Revenue and Taxation Code (R&TC) Section 23701 d.
- ☐ 4. We do not have current information about the entity.
- ☐ 5. The entity was administratively dissolved/cancelled on _____ through the Franchise Tax Board Administrative Dissolution process.

Important Information

- This information does not necessarily reflect the entity's current legal or administrative status with any other agency of the state of California or other governmental agency or body.
- If the entity's powers, rights, and privileges were suspended or forfeited at any time in the past, or if the entity did business in California at a time when it was not qualified or not registered to do business in California, this information does not reflect the status or voidability of contracts made by the entity in California during the period the entity was suspended or forfeited (R&TC Sections 23304.1, 23304.5, 23305a, 23305.1).
- The entity certificate of revivor may have a time limitation or may limit the functions the revived entity can perform, or both (R&TC Section 23305b).

Connect With Us

Web: **ftb.ca.gov**
Phone: 800-852-5711 from 7 a.m. to 5 p.m. weekdays, except state holidays
916-845-6500 from outside the United States

California

Relay Service: 711 or 800-735-2929 (For persons with hearing or speech impairments)



CITY OF MILPITAS

Item # C15.

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.



Revision	Date
Original	04/21/2006
	6/21/2022

CITY COUNCIL DONATION AND FEE WAIVER/REDUCTION POLICY / POLICY #

- 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.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Consider the Recommendations from Mayor Tran for Appointments to City Commissions (Contact: Mayor Tran, 408- 586-3029)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	9/6/2022
	<u>Recommendation:</u> Receive the recommendation from Mayor Tran and approve appointments to the Energy and Environmental Sustainability Commission and Youth Advisory Commission.

Background:

The City of Milpitas has 13 Commissions (including the Measure F Oversight Committee), with members appointed by the Mayor and confirmed by the City Council. The Commissions advise the Milpitas elected officials on a variety of community interest and policy areas.

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.

Current Commissioners may seek to be reappointed upon the expiration of their current term, but reappointment to a new term is not automatic. Those Commissioners seeking reappointment must contact the City Clerk and the Mayor to convey their request. Re-appointment must be recommended by the Mayor and confirmed by the City Council.

Analysis:

Mayor Tran is making the following recommendations for appointment:

Energy and Environmental Sustainability Commission:

1. Appoint Carmelo Coronel to Commissioner seat with a term expiring October 2025.

Youth Advisory Commission:

1. Reappoint Nia Gupte, Crystal Huang, and Rachel Plummer to terms expiring September 2025.
2. Appoint Natalie Chen and Vanessa Lam to terms expiring September 2025.
3. Appoint Ashton Chen as Alternate No. 1 with a term expiring September 2025.
4. Appoint Parnika Sadhu as Alternate No. 2 with a term expiring September 2025.

All recommended Commissioner appointments have been reviewed and confirmed by the City Clerk's office.

Fiscal Impact:

There is no fiscal impact associated with this item.

Recommendation:

Receive the recommendation from Mayor Tran and approve appointments to the Energy and Environmental Sustainability Commission and Youth Advisory Commission.

Attachments:

1. Applications

COMMISSION/COMMITTEE APPLYING FOR: Energy and Environmental Sustainability Commission

Name CARMELO ESPIRITU CORONEL

Address Type Residence

Address

City MILPITAS

Postal/Zip Code 95035

Mobile Number

E-Mail Address

City Clerk's Office
JUL 28 2022
RECEIVED

Present Employer Mountain's Edge General Contractors, Inc.

Other Phone (669) 946-7616

Occupation President

List community organizations to which you belong or have belonged (additional information may be attached).

If application is for Veterans Commission, indicate branch and service in any U.S. military organization (retired or active duty).

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):

I am a dedicated and self-motivated professional with over 15 years experience in construction project management. I am proficient in building relationship with clients and across organizations and teams. Experienced at managing projects from start to completion. Possess strong written and verbal communication skills. Please see attached comprehensive resume.

Upload a File [Carmelo Coronel - City of Milpitas.pdf](#)

Date Jul 27, 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.

Carmelo E. Coronel

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

Karen Chew

From: Nia Gupte
Sent: Friday, July 15, 2022 3:48 PM
To: City Clerk
Subject: Commission Reappointment Form

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

To whoever it may concern,

I hope this email finds you well. Attached below is my Commission Reappointment Form as a request to be reappointed to the Youth Advisory Commission. Please let me know if you have any questions, or encounter any errors with the file.

Have a great day.

Best Regards,
 Nia Gupte

**CITY OF MILPITAS COMMISSION
REAPPOINTMENT APPLICATION**

Youth Advisory Commission
COMMISSION REQUESTING REAPPOINTMENT FOR ↑

Name: Nia First Gupte Last

Currently serving as : ☒ Commissioner ☐ Alternate

Years of service: 1

I am requesting reappointment for an additional term.

If Youth Advisory Commission applicant, indicate your grade & school: 9th grade, Milpitas High School

I have sufficient time to devote to this responsibility and will attend the required meetings if I am reappointed.

Nia Gupte Signature 07/15/2022 Date

Reappointments to Commissions are made by the Mayor with the concurrence of the City Council.
 PLEASE BE AWARE THAT ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD
 E-mail, send in US mail or drop off your completed reappointment request:
 City Clerk, Milpitas City Hall 3rd floor, 455 E. Calaveras Blvd., Milpitas, CA 95035, email: CityClerk@ci.milpitas.ca.gov

CS Scanned with CamScanner

CITY OF MILPITAS COMMISSION REAPPOINTMENT APPLICATION

Item # C16.

Youth Advisory Commission

COMMISSION REQUESTING REAPPOINTMENT FOR **↑**

Crystal Huang

Name: _____
First Last

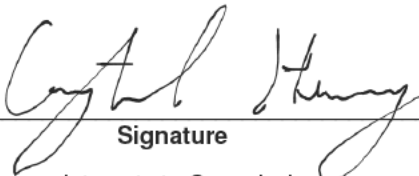
Currently serving as : ☒ Commissioner ☒ Alternate

Years of service: 1

I am requesting reappointment for an additional term.

If Youth Advisory Commission applicant, indicate your grade & school: Rising 9th, Milpitas High School

I have sufficient time to devote to this responsibility and will attend the required meetings if I am reappointed.


Signature

7/15/2022

Date

Reappointments to Commissions are made by the Mayor with the concurrence of the City Council.

PLEASE BE AWARE THAT ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

E-mail, send in US mail or drop off your completed reappointment request:

City Clerk, Milpitas City Hall 3rd floor, 455 E. Calaveras Blvd., Milpitas, CA 95035, email: CityClerk@ci.milpitas.ca.gov

CITY OF MILPITAS COMMISSION REAPPOINTMENT APPLICATION

Item # C16.

YAC

COMMISSION REQUESTING REAPPOINTMENT FOR ↑

Rachel Plummer

Name:

First

Last

Currently serving as : ☐ Commissioner ☐ Alternate

Years of service: 2

I am requesting reappointment for an additional term.

If **Youth Advisory Commission** applicant, indicate your grade & school: 11th Milpitas High School

I have sufficient time to devote to this responsibility and will attend the required meetings if I am reappointed.

Signature

7/16/22

Date

Reappointments to Commissions are made by the Mayor with the concurrence of the City Council.

PLEASE BE AWARE THAT ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD
E-mail, send in US mail or drop off your completed reappointment request:

City Clerk, Milpitas City Hall 3rd floor, 455 E. Calaveras Blvd., Milpitas, CA 95035, email: CityClerk@ci.milpitas.ca.gov

CITY OF MILPITAS YOUTH COMMISSION APPLICATION

Item # C16.

Youth Advisory Commission

PROVIDE COMPLETE INFORMATION (in black ink)

COMMISSION APPLYING FOR ↑

If you are only applying for the Youth Commission, please indicate that on the line that states "Commission Applying for." If you would like to serve as a nonvoting member on another commission, see instruction below. Please note that you may apply for the Youth Commission and nonvoting commissions.

The City allow one nonvoting youth to server on the commissions listed below. Please indicate by checking the boxes below which commissions you would like to serve on as a nonvoting member. Please select all commissions you are interested in. The Mayor will review your application and make appointments as appropriate.

- ☐ ARTS COMMISSION
- ☒ COMMUNITY ADVISORY COMMISSION
- ☐ ECONOMIC DEVELOPMENT & TRADE COMMISSION
- ☐ LIBRARY & EDUCATION COMMISSION
- ☐ PARKS, RECREATION & CULTURAL RESOURCES COMMISSION
- ☐ PUBLIC SAFETY & EMERGENCY PREPAREDNESS COMMISSION
- ☐ SCIENCE, TECHNOLOGY & INNOVATION COMMISSION
- ☐ SENIOR ADVISORY COMMISSION
- ☐ VETERANS COMMISSION

Name: Natalie First Chen (middle) Last

Address: Number Street (apt. # if needed) City & Zip Code

Telephone Number(s) e-mail address

Education: Please indicate your grade & school: 11th grade, Milpitas High School

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):
My qualifications involve my dedication to the community and my communication skills. I am the founder of "Mentors for Milpitas," a nonprofit that provides free public speaking classes to disenfranchised students with limited English fluency. My passion for improving Milpitas will shine during committee meetings, where I will propose innovative ideas. Additionally, as the winner of multiple speech competitions, I can convey my thoughts in an effective, thoughtful manner, allowing me to provide a unique perspective on any discussed topics

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.


Signature

05/14/2022

Date

Appointments to Commissions 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.**

PLEASE BE AWARE THAT ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

E-mail, send in US mail or drop off your completed application to:

City Clerk, Milpitas City Hall 3rd floor, 455 E. Calaveras Blvd., Milpitas, CA 95035, email: cityclerk@ci.milpitas.ca.gov

CITY OF MILPITAS YOUTH COMMISSION APPLICATION

Youth Commission

PROVIDE COMPLETE INFORMATION (in black ink)

COMMISSION APPLYING FOR **↑**

If you are only applying for the Youth Commission, please indicate that on the line that states "Commission Applying for." If you would like to serve as a nonvoting member on another commission, see instruction below. Please note that you may apply for the Youth Commission and nonvoting commissions.

The City allow one nonvoting youth to server on the commissions listed below. Please indicate by checking the boxes below which commissions you would like to serve on as a nonvoting member. Please select all commissions you are interested in. The Mayor will review your application and make appointments as appropriate.

- ☐ ARTS COMMISSION
- ☐ COMMUNITY ADVISORY COMMISSION
- ☐ ECONOMIC DEVELOPMENT & TRADE COMMISSION
- ☐ LIBRARY & EDUCATION COMMISSION
- ☐ PARKS, RECREATION & CULTURAL RESOURCES COMMISSION
- ☐ PUBLIC SAFETY & EMERGENCY PREPAREDNESS COMMISSION
- ☐ SCIENCE, TECHNOLOGY & INNOVATION COMMISSION
- ☐ SENIOR ADVISORY COMMISSION
- ☐ VETERANS COMMISSION

City Clerk's Office
AUG 03 2022
RECEIVED

Name: Vanessa First (middle) Last Lam

Address: Milpitas 95035 Number Street (apt. # if needed) City & Zip Code

Telephone Number(s) e-mail address

Education: Please indicate your grade & school: 11th grade, Milpitas High School

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):
From a young age, I have been involved with many community service organizations, and have experience in various activities, including tutoring, making care packages, and serving as a museum guide.

These activities have helped develop my public speaking skills, gain leadership experience, and open up my world view.

As a commissioner, I will do my best to use my knowledge in a way in which I can help voice the opinions of teens and offer better inputs for the community.

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.



Signature

8/2/2022

Date

Appointments to Commissions 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.**

PLEASE BE AWARE THAT ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

E-mail, send in US mail or drop off your completed application to:

City Clerk, Milpitas City Hall 3rd floor, 455 E. Calaveras Blvd., Milpitas, CA 95035, email: cityclerk@ci.milpitas.ca.gov

Youth Advisory Commission Supplemental Questionnaire



The City of Milpitas Youth Advisory Commission was founded in April 1996 to advise the City Council on matters pertaining to the youth and teens in Milpitas. All commissioners' must be in grades 7 through 12 and live in Milpitas. There are a total of nine (9) members and four (4) alternate members that serve one-year terms (October-September). The Youth Advisory Commission meets the 2nd Thursday of every month at 7:00pm at the Milpitas Sports Center. Please submit the Supplemental Questionnaire with the Commission Application.

1. What type of difference do you want to make for the youth in our community? (Please list two of your ideas. Please use the reverse side if you need more room.)

It is becoming increasingly important for youth to vocalize, discuss, and express their mental health in our community. Especially for students in their teenage years, factors aside from school and family can play a large part in cultivating stress and anxiety. I feel that starting an online forum where students can post anonymously would be a good platform for communication and receive help from others if needed.

2. How did you hear about the Youth Advisory Commission?

I heard about the Youth Advisory Commission from my father, who has always been an active supporter in my life. From a young age, he has encouraged me to expand my views and develop a proactive learning mindset, which has benefited me in innumerable ways.

3. What have you heard or know about the Youth Advisory Commission?

The Youth Advisory Commission is a committee of youth who assist the city in matters regarding teens and children overall. They hold meetings at regular times monthly, and can propose ideas to the city to promote well-being in the community.

4. Have you ever attended a Youth Advisory Commission meeting? If so, explain your experience.

No, I have not attended a Youth Advisory Commission meeting before. However, I believe it would be insightful to hear and discuss with a diverse group of students with various backgrounds. Each youth can provide their own opinions, and share with a group that is non-judgemental and communicative.

1. What type of difference do you want to make for the youth in our community? (cont'd)

I have also noticed that there is sometimes a steeper curve in learning material in middle and high school compared to elementary, so we could start a program to tutor students material beyond those in their grade curriculum, which allows students to pursue greater levels of academic material not offered in their current curriculums, therefore making the transition to higher grade levels easier.

COMMISSION/COMMITTEE APPLYING FOR:

Youth Advisory Commission

Name

Ashton Chen

Address Type

Residence

Address**City**

Milpitas

Postal/Zip Code

95035

Mobile Number**E-Mail Address**

City Clerk's Office

MAY 13 2022

RECEIVED

Present Employer

N/A

Education: If Youth Advisory Commission applicant, indicate your grade/school:

9th Grade/Milpitas High School

List community organizations to which you belong or have belonged (additional information may be attached).**Name of Organization**

Milpitas High School Model UN

Member

Youth Commissioner

Name of Organization

Milpitas High School Speech and Debate Club

Member

Secretary

Name of Organization

National Honor Society

Member

Board member

If application is for Veterans Commission, indicate branch and service in any U.S. military organization (retired or active duty).**Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):**

I believe that I would be an asset to the Youth Advisory Commission because of my strong public speaking, leadership, and communication skills. I have been competing in speech and debate for more than three years, and know how to passionately express my ideas and compel people to take action. I won the CHSSA Middle School State Championship in Lincoln Douglas debate in 8th grade, and qualified for the National Debate Coach Association National Championship this year for varsity Public Forum debate. My experiences in leadership include managing and organizing three Milpitas High School clubs and being the Junior Varsity tennis team captain I also co-founded the Coffee and Tea Club at Milpitas High School, which had over 100 signups.

Date

May 12, 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.

Ashton Chen

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 YOUTH COMMISSION APPLICATION

Item # C16.

YOUTH COMMISSION

PROVIDE COMPLETE INFORMATION (in black ink)

COMMISSION APPLYING FOR ↑

If you are only applying for the Youth Commission, please indicate that on the line that states "Commission Applying for." If you would like to serve as a nonvoting member on another commission, see instruction below. Please note that you may apply for the Youth Commission and nonvoting commissions.

The City allow one nonvoting youth to server on the commissions listed below. Please indicate by checking the boxes below which commissions you would like to serve on as a nonvoting member. Please select all commissions you are interested in. The Mayor will review your application and make appointments as appropriate.

- ☐ ARTS COMMISSION
- ☐ COMMUNITY ADVISORY COMMISSION
- ☐ ECONOMIC DEVELOPMENT & TRADE COMMISSION
- ☒ LIBRARY & EDUCATION COMMISSION
- ☒ PARKS, RECREATION & CULTURAL RESOURCES COMMISSION
- ☒ PUBLIC SAFETY & EMERGENCY PREPAREDNESS COMMISSION
- ☒ SCIENCE, TECHNOLOGY & INNOVATION COMMISSION
- ☐ SENIOR ADVISORY COMMISSION
- ☐ VETERANS COMMISSION

City Clerk's Office
FEB 14 2022
RECEIVED

Name: PARNIKA ABHIJIT SADHU
First (middle) Last

Address: MILPITAS, CA, 95035
Number Street (apt. # if needed) City & Zip Code

Telephone Number(s) e-mail address

Education: Please indicate your grade & school: 7th, RANCHO MIDDLE, MILPITAS, CA

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached): Since my childhood, I'm very energetic, and a driven individual in any activity that I undertake. I'm very social and I always seek opportunities where I can contribute towards our community. I firmly believe that giving back to our community is one of our primary responsibilities. In various activities that I have done, I strongly believe in helping our community grow. I am very eager to serve my community. I have attached list of activities done and with that I feel that I'm ready to be a youth commissioner and contribute even more.

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.

Parnika Sadhu
Signature Date 02/06/22

Appointments to Commissions 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.

PLEASE BE AWARE THAT ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

E-mail, send in US mail or drop off your completed application to:

City Clerk, Milpitas City Hall 3rd floor, 455 E. Calaveras Blvd., Milpitas, CA 95035, email: cityclerk@ci.milpitas.ca.gov

Youth Advisory Commission Supplemental Questionnaire



The City of Milpitas Youth Advisory Commission was founded in April 1996 to advise the City Council on matters pertaining to the youth and teens in Milpitas. All commissioners' must be in grades 7 through 12 and live in Milpitas. There are a total of nine (9) members and four (4) alternate members that serve one-year terms (October-September). The Youth Advisory Commission meets the 2nd Thursday of every month at 7:00pm at the Milpitas Sports Center. Please submit the Supplemental Questionnaire with the Commission Application.

1. What type of difference do you want to make for the youth in our community? (Please list two of your ideas. Please use the reverse side if you need more room.)

• More STEM opportunities

• Type 1 Diabetes

• Effects of Social Media on mental health

• Healthy Foods campaign

Additional details attached in a separate page.

2. How did you hear about the Youth Advisory Commission?

I have heard about Youth Advisory Commission through the Milpitas Beat, which I was introduced to by my parents. I also heard about it through the school leadership forum, as my friends were discussing it.

3. What have you heard or know about the Youth Advisory Commission?

I've heard the Youth Advisory Commission is used to address issues in the modern teen community. I've heard it strives to help teens to lead a better and more successful life.

4. Have you ever attended a Youth Advisory Commission meeting? If so, explain your experience.

No, I have never attended one. But, I am really looking forward to it.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Accept Commissioner Resignations (Staff Contact: Suzanne Guzzetta, Acting City Clerk, 408-586-3001)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	9/20/2022
	<u>Recommendation:</u> Accept the resignation of Khloe Cruz from the Youth Advisory Commission and Dana Arbaugh from the Library and Education Advisory Commission; and direct the Acting City Clerk to post the notice of unscheduled vacancy.

BACKGROUND:

In accordance with the City of Milpitas Commission By-Laws adopted as Resolution No. 7702, any member or alternate member of a Commission who is no longer available to serve, must submit a resignation in writing by sending a written communication to the Mayor and the City Clerk. The written resignation must then be accepted and confirmed by City Council via action on the consent calendar at a regularly scheduled City Council meeting. Khloe Cruz submitted a notice of resignation from the Youth Advisory Commission, and Dana Arbaugh submitted a notice of resignation for the Library and Education Advisory Commission.

ANALYSIS:

By state law, a Notice of an Unscheduled Vacancy must be posted by the City Clerk to advertise the vacant Commission seat. Final appointment to the board, commission, or committee for the Unscheduled Vacancy shall not be made by the legislative body for at least ten working days after the posting of the notice in the Clerk's office. The notice of the unscheduled vacancies for the Youth Advisory Commission and Library and Education Advisory Commission will be posted Wednesday, August 21, 2022.

FISCAL IMPACT:

There is no fiscal impact associated with this item.

RECOMMENDATION:

Accept the resignation of Khloe Cruz from the Youth Advisory Commission and Dana Arbaugh from the Library and Education Advisory Commission; and direct the Acting City Clerk to post the notice of unscheduled vacancy.

Attachments:

1. Email from Commissioner Khloe Cruz
2. Email from Commissioner Dana Arbaugh

From: khloe cruz
Sent: Friday, September 9, 2022 11:44 AM
To: Anthony Teschera
Subject: Stepping Down As a Commissioner

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

Good morning Mr.Teschera,

Unfortunately, I've made the decision that I will not be continuing in the next term for YAC as a Commissioner. Thank you for the opportunities and experience you all have provided for me. Good luck with the next, and future terms.

Thank you,
Khloe Cruz

From: [John Macon](#)
To: [Suzanne Guzzetta](#)
Cc: [Karen Chew](#)
Subject: FW: Resignation from Library Commission (Dana Arbaugh)
Date: Tuesday, September 13, 2022 1:34:33 PM

Good Afternoon Suzanne and Karen,

Here is the letter of resignation from Dana Arbaugh.

Regards,

John

-----Original Message-----

From: Dana Arbaugh <[REDACTED]>
Sent: Thursday, August 4, 2022 2:36 PM
To: Rich Tran <rtran@ci.milpitas.ca.gov>
Cc: John Macon <jmacon@ci.milpitas.ca.gov>; Jennifer Weeks <jweeks@sccl.org>; Kelly McKean <kmckean@sccl.org>; Stephen Fitzgerald <sfitzgerald@sccl.org>
Subject: Resignation from Library Commission

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

Dear Mayor Tran,

My wife and I have moved into the gated retirement community, The Villages, in south San Jose. At this point in our lives we need to cut back on our volunteer activities. Thus, after serving Milpitas on three different commissions plus the Friends of Library Board, I need to resign now from the Milpitas Library Commission. After 42 years of living in Milpitas, we will always have fond memories of such a nice city.
Sincerely, Dana Arbaugh

Sent from my iPhone



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Second Reading of Ordinance No. 228.1 of the City Council of the City of Milpitas Adding Chapter 9 (“Use Of Rights-Of-Way And Public Property”) to Title X (“Streets And Sidewalks”) of the Milpitas Municipal Code and Adding Section X-10-1.03 to Chapter 10 (“Structures Or Objects On Sidewalks Or Public Ways”) to Title X (“Streets And Sidewalks”) of the Milpitas Municipal Code (Staff Contact: Michael Mutalipassi, City Attorney, 408-586-3041)
Category:	Leadership and Support Services
Meeting Date:	9/20/2022
	<u>Recommendation:</u> Move to waive second reading and adopt Ordinance No. 228.1 of the City Council of the City of Milpitas adding Chapter 9 (“Use Of Rights-of-way and Public Property”) to Title X (“Streets and Sidewalks”) of the Milpitas Municipal Code and adding Section X-10-1.03 to Chapter 10 (“Structures or Objects on Sidewalks or Public Ways”) to Title X (“Streets and Sidewalks”) of the Milpitas Municipal Code.

Background:

This Ordinance was introduced at the September 6, 2022 regular meeting of the City Council. The Ordinance is now ready for its second reading and adoption.

Fiscal Impact:

There is no cost to adopt the ordinance. There will, however, be costs associated with the enforcement of the ordinance. The City will expend police resources to enforce the ordinance and public works resources on potential disposal or storage of property left in the public right-of-way.

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 second reading and adopt an Ordinance of the City Council of the City of Milpitas Adding Chapter 9 (“Use Of Rights-of-way and Public Property”) to Title X (“Streets and Sidewalks”) of the Milpitas Municipal Code and Adding Section X-10-1.03 to Chapter 10 (“Structures or Objects on Sidewalks or Public Ways”) to Title X (“Streets and Sidewalks”) of the Milpitas Municipal Code.

Attachment:

Ordinance of the City Council of the City of Milpitas Adding Chapter 9 (“Use Of Rights-of-way and Public Property”) to Title X (“Streets and Sidewalks”) of the Milpitas Municipal Code and Adding Section X-10-1.03 to Chapter 10 (“Structures or Objects on Sidewalks or Public Ways”) to Title X (“Streets and Sidewalks”) of the Milpitas Municipal Code

REGULAR

NUMBER: ____.

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS ADDING CHAPTER 9 (“USE OF RIGHTS-OF-WAY AND PUBLIC PROPERTY”) TO TITLE X (“STREETS AND SIDEWALKS”) OF THE MILPITAS MUNICIPAL CODE AND ADDING SECTION X-10-1.03 TO CHAPTER 10 (“STRUCTURES OR OBJECTS ON SIDEWALKS OR PUBLIC WAYS”) TO TITLE X (“STREETS AND SIDEWALKS”) OF THE MILPITAS MUNICIPAL CODE

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of _____, upon motion by _____ and was adopted (second reading) by the City Council at its meeting of _____, upon motion by _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta, Acting City Clerk_____
Rich Tran, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi, City Attorney**BE IT ORDAINED BY THE CITY OF MILPITAS AS FOLLOWS:**

WHEREAS, the homeless crisis has reached epic proportions across the State of California having significant effects on the City of Milpitas (the “City”); and

WHEREAS, in order to sustainably address street homelessness, a trauma informed approach must be suitably applied across the City; and

WHEREAS, it is the obligation of the City to keep its public rights of way clean and available for public use, and to protect the public health, safety, and access by all people, and

WHEREAS, the City should seek to accomplish the aforementioned objectives in a manner that preserves the dignity and safety of all residents and exhausts alternative models to promote compliance, and

WHEREAS, maintaining pedestrian and authorized commercial activity on public sidewalks is essential to public safety, thriving neighborhoods and a vital economy in the City, and

WHEREAS, sitting or lying down is not the customary use of the public sidewalks, and

WHEREAS, the need to maintain pedestrian and commercial traffic is greatest during the hours of operation of businesses, shops, restaurants, and other City commercial enterprises when public sidewalks are congested, and when City residents are most likely to use their neighborhood sidewalks, and

WHEREAS, persons who sit or lie down on public sidewalks during business hours threaten the safety of pedestrians, especially the elderly, disabled, vision-impaired, and children. Persons who sit or lie down also deter residents and visitors from patronizing local shops, restaurants, and businesses, and deter people from using the sidewalks in their neighborhoods, and

WHEREAS, business areas and neighborhoods become dangerous to pedestrian safety and economic vitality when individuals block the public sidewalks. This behavior causes a cycle

of decline as residents and visitors go elsewhere to walk, meet, shop, and dine, and residents become intimidated from using the public sidewalks in their own neighborhoods, and

WHEREAS, lying down or sitting is an incompatible use of the sidewalk in residential and commercial areas, and in order to prevent displacement of violators from one neighborhood to another, the need for regulation applies Citywide.

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 Chapter 9 (“Use of Rights-of-way and Public Property”) To Title X (“Streets And Sidewalks”) Of The Milpitas Municipal Code is added to read as follows:

Chapter 9 - USE OF RIGHTS-OF-WAY AND PUBLIC PROPERTY

X-9-1.00 - SITTING, LYING, OR SLEEPING OR STORING, USING, MAINTAINING, OR PLACING PERSONAL PROPERTY IN THE PUBLIC RIGHT-OF-WAY

- (a) No person shall obstruct a street, sidewalk, or other public right-of-way:
 - (1) by sitting, lying, or sleeping, or by storing, using, maintaining, or placing personal property, or by erecting any tent or structure in a manner that impedes passage, as provided by the Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990), as amended from time to time;

- (2) by sitting, lying, or sleeping, or by storing, using, maintaining, or placing personal property, or by erecting any tent or structure within ten feet of any operational or utilizable driveway or loading dock;
 - (3) by sitting, lying, or sleeping, or by storing, using, maintaining, or placing personal property, or by erecting any tent or structure within five feet of any operational or utilizable building entrance, building exit, or any area designated as an emergency egress pathway or corridor;
 - (4) by sitting, lying, or sleeping, or by storing, using, maintaining, or placing personal property, or by erecting any tent or structure within five feet of any fire hydrant, fire plug, or other fire department connection;
 - (5) by sitting, lying, or sleeping, or by storing, using, maintaining, or placing personal property, or by erecting any tent or structure within the public right-of-way in a manner that obstructs or unreasonably interferes with the use of the right-of-way for any activity for which the City has issued a permit;
 - (6) by sitting, lying, or sleeping, or by storing, using, maintaining, or placing personal property, or by erecting any tent or structure within the public right-of-way between seven (7:00) a.m. and eleven (11:00) p.m.
- (b) No person shall obstruct any portion of any street or other public right-of-way open to use by motor vehicles, or any portion of a bike lane, bike path, or other public right-of-way open to use by bicycles, by sitting, lying, or sleeping, or by storing, using, maintaining, or placing personal property, or by erecting any tent or structure anywhere within the street, bike lane, bike path, or other public right-of-way, as specified for use by motor vehicles or bicycles.
- (c) Except as limited by Subsection (d), no person shall:

(1) sit, lie, sleep, or store, use, maintain, place personal property, or erect any tent or structure in or upon any street, sidewalk, or other public right-of-way within the distance stated on the posted signage (up to a maximum of 500 feet) of a property designated as a sensitive use. For a property to be designated as a "sensitive use," the property must be a Public Building, School, Day Care Center, Public Park, Recreation Center, or Public Library;

(2) sit, lie, sleep, or store, use, maintain, place personal property, or erect any tent or structure in or upon any street, sidewalk, or other public right-of-way within the distance stated on the posted signage (up to a maximum of 500 feet) of a designated overpass, underpass, tunnel, bridge, pedestrian bridge, wash, or spreading ground, where the City Council determines, in the designating resolution, that the public health, safety, or welfare is served by the prohibition, including, without limitation, by finding that sleeping or lodging within the stated proximity to the designated area is unhealthy, unsafe, or incompatible with safe passage;

(3) sit, lie, sleep, or store, use, maintain, place personal property, or erect any tent or structure in or upon any street, sidewalk, or other public right-of-way that has been posted with signage prohibiting sitting, lying, sleeping, or storing, using, maintaining, or placing personal property. In order to designate a section of street, sidewalk, or other public right-of-way as prohibited under this subdivision, the City Council shall determine, in a designating resolution and based on specific documentation, that the circumstances of continued sitting, sleeping, lying, storing personal property, or otherwise obstructing the public right-of-way at that location poses a particular and ongoing threat to public health or safety. For each such location, a prohibition pursuant to

this subdivision shall be effective for a period of time specified in the resolution, but not to exceed one year.

(d) No person shall be found to be in violation of any prohibition set forth in Subsection (c), unless and until: (i) the City Council has taken action, by resolution, to designate a specified area or areas for enforcement against sitting, lying, sleeping, or storing, using, maintaining, or placing personal property, erecting a tent or structure, or otherwise obstructing the public right-of-way; (ii) the City has posted signage at the designated area or areas set forth in the resolution, with such signage including reference to any required findings adopted in the resolution, and giving notice of the date after which no sitting, lying, sleeping, or storing, using, maintaining, or placing personal property, or otherwise obstructing the public right-of-way will be allowed; and (iii) at least 7 calendar days have passed from the date on which the signage is posted at the designated area or areas. For the purpose of this section signage may be attached to existing structures or foliage.

(e) Violations of this section involving a person who willfully resists, delays, or obstructs a City employee or contractor from enforcing this section or who willfully refuses to comply after being requested to do so by an authorized City employee shall be subject to the penalties set forth in Milpitas Municipal Code section I-1-4.09-2.00. All other violations of this section shall be enforceable pursuant to Milpitas Municipal Code section X-9-3.00. Violation of this section constitutes a public nuisance that may be abated pursuant to Milpitas Municipal Code section X-

(f) The prohibitions in section shall not apply to any person:

- (1) Sitting or lying down on a public sidewalk due to a medical emergency;
- (2) Using a wheelchair, walker, or similar device as the result of a disability;

- (3) Operating or patronizing a commercial establishment conducted on the public sidewalk pursuant to a sidewalk use permit;
 - (4) Participating in or attending a parade, festival, performance, rally, demonstration, meeting, or similar event conducted on the public sidewalk pursuant to and in compliance with a street use or other applicable permit;
 - (5) Sitting on a fixed chair or bench located on the public sidewalk supplied by a public agency or by the abutting private property owner;
 - (6) Sitting in line for goods or services unless the person or person's possessions impede the ability of pedestrians to travel along the length of the sidewalk or enter a doorway or other entrance alongside the sidewalk; or
 - (7) Who is a child seated in a stroller.
- (g) No person shall be cited under this Section unless the person engages in conduct prohibited by this Section after having been notified by a peace officer that the conduct violates this Section.

X-9-2.00 – ABATEMENT OF PERSONAL PROPERTY, TENTS, AND STRUCTURES IN THE PUBLIC RIGHT-OF-WAY

- (a) Personal property, tents and structures stored in violation of Milpitas Municipal Code section X-9-1.00 constitute a public nuisance that may be abated in accordance with the following requirements.
- (b) Notices.
 - (1) Notice of Intent to Remove Property. The City shall provide residents in violation of section X-9-1.00 notice of the City's intent to remove property no less than 24 hours in advance of any action to remove property. Notice shall be in writing and shall be

served personally on the resident or residents in possession of the property when the City official or employee enforcing the prohibition serves the notice. In addition, the City official or employee shall post the notice on or near the property, so as reasonably to communicate the notice to persons with an interest in such property but not present during the attempt to serve notice. The notice shall contain the following information:

- (A) the location of the property constituting a nuisance;
- (B) the date and time notice is served or posted;
- (C) a statement that the property violates section X-9-1.00;
- (D) a statement that the City will remove the property 24 hours after the date and time of the notice;
- (E) a statement that there is Housing or Shelter and Homeless Services available for residents and the phone number and address to contact in order to obtain the Housing or Shelter and Homeless Services;
- (F) a statement that any personal property remaining at the location when the City returns to abate the nuisance will be impounded for no fewer than 90 days and will be discarded thereafter if not claimed; and
- (G) the address, phone number, and operating hours of the location where the personal property will be stored and may be retrieved and that the City will charge no fee for storage or retrieval.

- (2) Notice Following Abatement. When the City removes personal property, a written notice shall be given conspicuously posted in the area from which the personal property was removed. The notice shall contain the following information:

- (A) the location of the property removed;
- (B) a statement that the property violated section X-9-1.00;
- (C) a general description of any personal property removed;
- (D) the date and time the personal property was removed;
- (E) a statement that the personal property will be stored for at least 90 days, and the address, phone number, and operating hours of the location where the personal property is being stored and may be retrieved and that the City will charge no fee for storage or retrieval; and
- (F) a statement that if the personal property is not retrieved within 90 days, it will be discarded.

X-9-3.00 - PENALTIES

- (a) Violations of any section of this chapter shall be subject to the penalties set forth:
 - (1) First Offense. Any person violating any provision of this Chapter shall be guilty of an infraction. Upon conviction, the violator shall be punished by a fine of not less than \$50 or more than \$100 and/or community service, for each provision violated.
 - (2) Subsequent Offenses. Any person violating any provision of this Chapter within 24 hours after violating and being cited for a violation of this Chapter shall be guilty of a misdemeanor and shall be punished by a fine of not less than \$300 and not more than \$500, and/or community service, for each provision violated, or by imprisonment in the County Jail for a period of not more than ten (10) days, or by both such fine and imprisonment. Any person violating any provision of this Section within 120 days after the date of conviction of a violation this Section shall be guilty of a misdemeanor and shall be punished by a fine of not less than \$400 and not more than \$500, and/or

community service, for each provision violated, or by imprisonment in the County Jail for a period of not more than thirty (30) days, or by both such fine and imprisonment.

X-9-4.00 - REPORTING

Upon the request of the City Council, the Police Department shall make a written report to the Mayor and the City Council that evaluates the effectiveness of enforcement of this Chapter on the City's neighborhoods.

SECTION 4 AMENDMENT OF MILPITAS MUNICIPAL CODE: That Chapter 10

(“Structures or Objects on Sidewalks or Public Ways”) to Title X (“Streets And Sidewalks”) of the Milpitas Municipal Code is added to read as follows:

X-10-1.03

The provisions of this Chapter shall not apply to any detached tent, detached structure, or other detached object used for sitting, sleeping, or lying outside by a person who cannot otherwise obtain shelter.

SECTION 5. 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 6. 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:	Conduct a Public Hearing and Introduce an Ordinance No. 38.846 Amending Sections of Chapter 10, Title XI of the Milpitas Municipal Code Relating to Non-Residential Building Heights (Staff Contact: Ned Thomas, Planning Director, 408-586-3273)
Category:	Public Hearings-Community Development
Meeting Date:	9/20/2022
	<u>Recommendations:</u> (1) Conduct a public hearing and move to close the hearing following comments. (2) City Attorney shall read aloud title of the Ordinance. (3) Move to waive the first reading beyond the title and introduce an Ordinance amending sections of Chapter 10 of Title XI of the Milpitas Municipal Code relating to Non-Residential Building Heights and determine that the Municipal Code amendment 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).

Background

The proposed ordinance provides greater clarity and guidance regarding standards for maximum height for non-residential buildings in three of the city's commercial zones: General Commercial (C2), Highway Services (HS) and Town Center (TC). The Zoning Ordinance does not currently state the maximum allowable height for buildings in these zones – the Commercial Zone Development Standards table (Table XI-10-5.03-1) shows the maximum height for primary buildings in these zones as "None."

In practice, the height of proposed new buildings or modifications to existing buildings in these zones is reviewed and determined through the Site Development Permit process; however, the lack of specific standards for building height creates uncertainty not only for project applicants, but also for property owners and residents in the vicinity of proposed development sites. It could also put the Planning Commission in a difficult and complicated position if an applicant were to propose a very tall building that was significantly out of scale with its surroundings and not consistent with the context of the surrounding area, because the Zoning Ordinance does not currently provide clear guidance as to how an appropriate building height should be determined or what factors should be considered as part of this decision.

To rectify these circumstances, Planning staff proposes to add a specific maximum height (by right) of 35 feet or three stories for primary buildings in the General Commercial, Highway Services, and Town Center zones as standards in the Commercial Zone Development Standards table. For properties in these zones that are located within 500 feet of the boundary of a Single Family Residential (R1) or One and Two-Family Residential (R2) zone, the building height would be limited to 30 feet or 2.5 stories, consistent with the maximum height in those residential zones.

In addition, staff proposes to allow additional building height through discretionary review in the Industrial Park (MP), General Commercial (C2), and Town Center (TC) – up to 75 feet or six stories – with a Conditional Use Permit (CUP) (note: this provision would not apply to properties located within 500 feet of the boundary of a low-density residential zone (R1 or R2)). The Zoning Ordinance currently allows additional height beyond three stories or 35 feet, with no maximum height specified, in the MP and TC districts with approval of a CUP. The proposed ordinance would add C2 to the zones where additional height may be conditionally permitted and set the 75-foot/six-story maximum). Specific new findings that would apply to a CUP requesting building height in excess of the by-right standard are also included in the proposed amendments.

The Planning Commission considered the proposed ordinance for Zoning Code Amendments at its meeting on June 8, 2022. Following public comment, the Planning Commission requested that staff make minor changes to the Zoning Code Amendments to further limit non-residential building heights within 100 feet of the boundary of a low-density residential zone (R1 or R2) to two stories or 30 feet, and then unanimously adopted Resolution 22-006 (Attachment B) recommending that the City Council adopt the proposed Ordinance (with the suggested changes).

On June 14, 2022, the City Council held a discussion about the draft zoning amendments relating to non-residential building heights. Members of the Council supported the Planning Commission's recommendations and directed staff to revise the draft zoning amendments accordingly, and to bring forth the proposed Ordinance to the City Council for formal action and adoption.

On August 9, 2022, the City Council held a public hearing to solicit public comment on the proposed zoning ordinance amendment. The Council approved the first reading of the Ordinance and it was subsequently scheduled for a second reading and adoption at the following City Council meeting on August 16, 2022. At that meeting, Mayor Tran requested that adoption of the proposed zoning ordinance amendment be postponed to a future meeting and directed staff to meet with members of the Milpitas Involved Citizens (MIC) neighborhood group to review the proposed amendment and resolve any concerns.

Changes to Draft Ordinance Based on Discussions with MIC

Staff met with MIC members at City Hall on August 26, 2022, to discuss the proposed zoning ordinance text amendment. Staff and MIC members agreed on the following minor modifications to the draft amendment:

- Increase the buffer zone, where parcels are not eligible for additional discretionary building height with approval of a CUP, from the original proposal of 100 feet to a minimum of 500 feet.
- Relocate existing language in the zoning ordinance allowing additional discretionary height with approval of a Conditional Use Permit (CUP) to the Notes column of Table XI-57.04-1 in MMC Section XI-57.04 "Conditional Use Permits and Minor Conditional Use Permit." Format the relocated terms as two additional findings that must be made for approval of a CUP for additional discretionary height. The two additional findings are: 1) that the building will not create a "dominating visual prominence" that is incongruent with the neighborhood, and; 2) the building meets all other applicable development standards for the site where it is located.
- Correct a typographical error in the footnotes of Table XI-10-57-04.1 to reference the correct footnote.

Overview of Draft Ordinance

The proposed ordinance includes amendments to the following sections of the Zoning Code (Title XI, Chapter 10 of the Milpitas Municipal Code):

Commercial Zone General Development Standards (XI-10-5.03): The Commercial Zone Development Standards table (Table XI-10-5.03-1) would be amended to add a maximum height of 35 feet or three stories for primary buildings in the General Commercial (C2), Highway Services (HS), and Town Center (TC) zones (except for properties within 100 feet of an R1 or R2 residential zone, where the maximum building height would be 30 feet or two stories). The maximum primary building height in the Neighborhood Commercial

(C1) zone is also proposed to be changed from 35 feet or 2.5 stories to 35 feet or three stories, for consistency with the standards for other commercial zones.

Footnote number 1 to the development standards table would apply to both the C2 and TC zones, and the existing footnote text would be amended to reference the provisions in the Commercial Zone Special Development Standards and Conditional Use Permit sections of the Zoning Code that allow for additional primary building height subject to a CUP. The proposed buffer would be 500 feet rather than 100 feet.

Commercial Zone Special Development Standards (XI-10-5.04): A new Subsection (D) would be added and would include language outlining guidance on criteria the Planning Commission should consider when reviewing a request for additional building height pursuant to a CUP. The proposed criteria focus on site-specific conditions and design elements such as the width of the right-of-way of the principal street; the proximity of the subject site to low-or medium-density residential districts R1, R2, and R3; building setbacks as they relate to the proposed building height beyond 35 feet; and upper story building step-backs. These criteria are intended to provide clear and objective direction about the factors that should inform a decision about a CUP application for additional building height.

Conditional Use Permits and Minor Conditional Use Permits (XI-10-57.04): As noted above, Table XI-10-57.04-1 in the Conditional Use Permits section of the Zoning Code currently includes a provision allowing for consideration of additional building height beyond 35 feet or three stories in the MP and TC zoning districts. The proposed ordinance would make the provision also applicable in the C2 zone and would amend it to add a maximum building height standard of 75 feet or six stories with a CUP (except that the provision for a discretionary increase in building height with a CUP would not apply to properties within 500 feet of an R1 or R2 residential zone).

A note would also be added to the table referencing the criteria discussed above (in Subsection XI-10-5.04) that apply to requests for a CUP for excess building height and the specific findings for approval for this type of CUP, which appear below in Table XI-10-57.04-2 in this subsection. The findings would be amended to eliminate the existing language related to “exceptional architecture and aesthetic merit,” which is highly subjective, and to add new, more subjective findings related to the proposed building’s compatibility with the surrounding area. The proposed new findings would consider factors such as the design, location, size, and bulk of the proposed building; the transition in scale between the proposed building and structures in adjacent residential districts; shadow impacts of the proposed building on adjacent parcels, public sidewalks, and public open spaces; the building does not create a dominating visual prominence that is incongruent with the scale and character of the neighborhood; and the building must meet all other development standards for the site where it is located.

Definitions (XI-10-2.03): As part of the proposed zoning amendments for non-residential building heights, a minor amendment is included to the definition of the term “Floor Area Ratio” (FAR). The language allowing for increased FAR with approval of a Use Permit would be deleted. The purpose of this proposed change is twofold: first, to eliminate potential conflicts and confusion that may arise if a project applicant were to file a request for additional height and additional FAR (which are related but different); and second, because such a provision for a discretionary increase to the maximum allowed FAR would be more appropriately located as part of development standards elsewhere in the Zoning Code, rather than as part of the definition of the term FAR.

Through the process of preparing these proposed zoning amendments, staff has discussed the issue of discretionary increases to maximum FAR, and whether and how the City’s Zoning Code should address them. Typically, when a jurisdiction allows for a discretionary increase in allowable FAR, it is used as an incentive, so the City receives something in return from the project (e.g. affordable housing, public open space, or other public amenities, etc.). Staff determined that for the sake of simplicity, for now the provision for increased FAR should be eliminated from the Zoning Code, and the issue should be revisited in more detail as part of the forthcoming comprehensive zoning update.

Policy Alternative:

Alternative: Do not adopt the ordinance amending regulations for non-residential building heights in Title XI, Chapter 10 of the Municipal Code. There would continue to be no stated maximum height for primary buildings in the C2, HS, and TC zones. When a development application is submitted, any building height could theoretically be proposed, and Planning staff would review and make a determination about appropriate building height as part of the Site Development Permit review process.

Pros: Continuation of status quo (no new regulations for the City or developers to follow; maximum flexibility in interpreting development standards for commercial building height).

Cons: Lack of clarity and predictability for Planning staff and developers; lack of clear criteria or findings on which the Planning Commission may base a decision about building height.

Reason not recommended: It is to the City's advantage to have clear and specific standards and review procedures pertaining to building height in commercial areas. Because the Zoning Code does not currently provide clear guidance as to how to determine what building height would be appropriate for a specific context, there is a risk that an applicant could propose an excessively tall building that would be significantly out of scale with its surroundings, and that may create negative impacts on adjacent properties related to shadows and solar access, views, and/or general neighborhood character and compatibility. In such a case, Planning staff and the Planning Commission may not have a strong and defensible foundation on which to base a decision requiring the applicant to reduce the building height.

Fiscal Impact:

The proposed zoning ordinance amendments will establish a maximum height for buildings in three of the city's commercial zones: General Commercial (C2), Highway Services (HS) and Town Center (TC). This change in development regulations will have no fiscal impact on the City.

California Environmental Quality Act:

The proposed text amendments to the Milpitas Municipal Code are exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15183 (Projects Consistent with a General Plan) and Section 15061(b)(3) (Common Sense Exemption).

The proposed ordinance would result in the adoption of new development standards for building height as well as review criteria and findings for approval for discretionary increases in building height. It would provide City staff and the Planning Commission with specific tools to use to ensure that the scale and design of new development is compatible with surrounding areas and does not create adverse effects on other properties. These regulations would help to promote good development that fits well with its surroundings and relates well to other buildings in the area and public spaces in terms of size and design. 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, the ordinance is exempt from CEQA review.

Recommendations:

- 1) Conduct a public hearing and move to close the hearing following comments.
- 2) City Attorney shall read aloud title of the Ordinance.
- 3) Move to waive the first reading beyond the title and introduce Ordinance 38.846 amending sections of Chapter 10 of Title XI (Zoning) of the Milpitas Municipal Code relating to Non-Residential Building Heights and determine that the Municipal Code amendment is exempt from California Environmental Quality Act pursuant to CEQA Guidelines Sections 15183 (Projects Consistent with a General Plan) and 15061(b)(3) (Common Sense Exemption).

Attachments:

- A) Draft Ordinance No. 38.846
- B) Planning Commission Resolution No. 22-006

PLEASE NOTE:

This copy of Ordinance No. 38.846 is a “redlined” version for your convenience. Text additions are designated by an underline and text deletions are designated with a strikethrough.

REGULAR

NUMBER: 38.846

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING SECTIONS OF CHAPTER 10 OF TITLE XI OF THE MILPITAS MUNICIPAL CODE TO MODIFY AND ADD REGULATIONS RELATING TO MAXIMUM HEIGHTS FOR NON-RESIDENTIAL BUILDINGS IN CERTAIN COMMERCIAL ZONES, AND MAKING FINDINGS OF CEQA EXEMPTION

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of _____, upon motion by _____ and was adopted (second reading) by the City Council at its meeting of _____, upon motion by _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

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, clear and specific zoning regulations, including development standards and findings for project approval, are important elements in a municipal government’s process of encouraging and approving high-quality development projects that are compatible with surrounding areas; and

WHEREAS, the City’s Zoning Ordinance, Chapter 10 of Title XI of the Milpitas Municipal Code, does not currently include standards for the maximum height of primary buildings in the General Commercial (C2), Highway Services (HS), or Town Center (TC) zoning districts; and

WHEREAS, the City wishes to enact appropriate regulations applying to the maximum height of primary buildings in the C2, HS, and TC zones, and further to conditionally allow additional building height in the C2 and TC zones, when such buildings are appropriately located and well designed to avoid negative impacts on surrounding properties and public spaces; and

WHEREAS, the City has prepared a Zoning Amendment (“Amendment”) to the City’s Municipal Code, including Section 2.03 (“Definitions”), Section 5.03 (“Commercial Zone General Development Standards”), Section 5.04 (“Commercial Zone Special Development Standards”), and Section 57.04 (“Conditional Use Permits and Minor Conditional Use Permits”), of Title XI, Chapter 10–Zoning; and

WHEREAS, on June 8, 2022, 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 June 14, 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, on August 9, 2022, the City Council of the City of Milpitas held a lawfully noticed public hearing to solicit public comment, take public testimony, and consider the proposed Amendment; and

WHEREAS, on August 16, 2022, the City Council postponed adoption of the proposed Amendment and directed staff to meet with member of the Milpitas Involved Citizens neighborhood group to review the proposed Amendment, answer questions, and resolve any concerns; and

WHEREAS, on September 20, 2022, the City Council of the City of Milpitas held a second lawfully noticed public hearing to solicit public comment, take public testimony, and consider a modified version of the proposed Amendment; 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).

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 enact new building height regulations for non-residential development in the General Commercial (C2), Highway Services (HS), and Town Center (TC) zoning districts. Since there are currently no maximum building heights specified in the development standards for these zones, the ordinance would create and apply new standards that are more specific and robust than those that currently govern new development. In addition, new regulations are proposed that would apply in circumstances where a project applicant proposes a greater building height than the 35 feet or three stories that is allowed by right in the C2 and TC zones. These draft standards would encourage good design and improve project compatibility with surrounding areas, thereby eliminating or mitigating potential negative effects. 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.” These proposed zoning amendments serve to implement policies and guidelines in the Community Design Element of the Milpitas General Plan because they would add development standards, design criteria, and findings for approval for non-residential buildings to ensure that any proposed building that is taller than the maximum height allowed by right is designed to fit in well with existing neighborhood context and to minimize impacts on surrounding properties. 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 Community Design Element of the City’s General Plan includes policies and guidelines that require development projects to (1) incorporate context-sensitive design approaches, respecting and responding to the

scale and character of adjacent land uses as well as surrounding neighborhoods; and to (2) reinforce design elements of the surrounding area, such as scale and setback patterns. This zoning Amendment would set maximum by-right height for primary buildings in three commercial zoning districts, where no maximum height standards are currently stated. The proposed zoning changes provide specific and detailed guidance about how a request for additional conditionally permitted height should be evaluated and what factors should form the basis of a decision on such a request. Moreover, the Amendment includes well-crafted language for findings for approval of conditional requests for additional building height, which would serve to ensure that contextual factors (e.g. neighborhood scale and width of primary street right-of-way) and project-specific design factors (such as building setbacks and upper story building step-backs) are considered as part of development projects involving taller buildings in commercial areas. In this way, the proposed Amendment would serve to implement several policies of the General Plan.

SECTION 4. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 2

Title XI, Chapter 10, Section 2 (Definitions), Subsection XI-10-2.02 (General Definitions) of the Milpitas Municipal Code is hereby amended to read as follows:

XI-10-2.03 Definitions

"**Floor Area Ratio (FAR)**" is defined for nonresidential Zoning Districts as the maximum permitted ratio of gross floor area to site area and is calculated as follows:

$$\text{FAR} = \frac{\text{Total of Gross Floor Area for All Structures on Site}}{\text{Site Area}}$$

~~Increases above the maximum permitted FAR for any district can be allowed with approval of a Use Permit by the Planning Commission. This can be considered when the applicant can demonstrate that the proposed development will (1) generate low peak-hour traffic; (2) will not create a dominating visual prominence. Examples of such uses include wholesaling, distribution and hospitals. In each case where an increase in the maximum permitted FAR has been allowed, all other development standards for the site must be met.~~

SECTION 5. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 5

Title XI, Chapter 10, Section 5 (Commercial Zones and Standards), Subsection XI-10-5.03 (Commercial Zone General Development Standards) of the Milpitas Municipal Code is hereby amended to read as follows:

XI-10-5.03 Commercial Zone General Development Standards

The following minimum requirements shall be observed, except where increased for conditional uses. The minimum requirement shall be one of the following for the district classification as designated on the zoning map.

**Table XI-10-5.03-1
Commercial Zone Development Standards**

Standard	CO	C1	C2	HS	TC
Lot Area, minimum	None	None	10,000 s.f.	Fronting major street	None.

				(4 or more lanes): 1.5 ac. Fronting all other streets (two lanes): 20,000 s.f.	
Lot Width, minimum	None	None	100 ft.	Fronting major street: 250 ft. Fronting all other streets: 125 ft.	None
Front Yard Setback, minimum	10 ft.	20 ft.	0 ft.	Major street: 50 ft. All other streets: 0 ft.	20 ft. 35 ft. along E. Calaveras Blvd.
Side Yard Setback (Interior), minimum	10 ft.	0 ft. 15 ft. when abutting R District	0 ft. 15 ft. when abutting R District	0 ft. 15 ft. when abutting R District	0 ft. 15 ft. when abutting R District
Street Side Yard Setback, minimum	10 ft.	0 ft.	0 ft.	0 ft.	20 ft. 35 ft. along E. Calaveras Blvd.
Rear Yard Setback, minimum	10 ft. When abutting residential, not less than R District required setback	0 ft. 15 ft. when abutting R District	0 ft. 15 ft. when abutting R District	0 ft. 15 ft. when abutting R District	0 ft. 15 ft. when abutting R District
Building Height, maximum					
Primary building	35 ft. or 3 stories	35 ft. or 2.53 stories	None 35 ft. or 3 stories^{1,2}	None 35 feet or 3 stories²	None ¹ 35 feet or 3 stories^{1,2}
Accessory building	25 ft. or 2 stories	25 ft. or 2 stories			
Parking	Refer to Section 53, Off Street Parking, of this Chapter.				
Lot Coverage	None	None	None	None	None
Floor Area Ratio	0.50	0.35	0.50	0.50	0.85
Landscaping	None	None	None	25% of front yard setback	All required setback areas and the ends

					of each parking aisle ²³	Item # 19.
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¹ Refer to Subsections [XI-10-5.04\(D\) and XI-10-57.04\(C\)\(1\)](#), ~~Applicability~~, of this Chapter for additional requirements.

² [For properties that are located within 500 feet of the boundary of a Single Family Residential \(R1\) or One and Two-Family Residential \(R2\) zone, the maximum height of a primary building shall be limited to 30 feet or 2.5 stories.](#)

²³ The Planning Commission shall determine the size of the planters through site and architectural review.

Title XI, Chapter 10, Section 5 (Commercial Zones and Standards), Subsection XI-10-5.04 (Commercial Zone Special Development Standards) of the Milpitas Municipal Code is hereby amended to read as follows:

XI-10-5.04 Commercial Zone Special Development Standards

A. All Zones.

1. Areas for Collecting and Loading Recyclable Materials. There shall be provided areas for collecting materials in accordance with Subsection 54.12, Areas for collecting and loading recyclable materials, of this Chapter.
2. All outdoor storage areas of such things as trash and materials shall be within a completely enclosed building or behind a visually obscure solid wall or tight board fence a minimum six (6) feet in height and shall not be located within any front or street side yard setback area.
3. Such uses, operations or products shall not be objectionable due to odor, dust, smoke, noise, vibration or other similar causes.

B. TC Zone.

1. Setbacks for Residential Projects. Except for the Calaveras Boulevard setback, all other setbacks shall be determined through a Site Development Permit.

C. Neighborhood Commercial (C1) Zone. Thrift stores shall comply with each of the following standards:

1. Signage prohibiting dumping of merchandise during non-business hours shall be installed in conspicuous locations to the satisfaction of the Planning Director indicating penalties and fines for such activity. Signage shall include daytime collection hours for donated goods.
2. A designated area inside the building shall be established for the receipt, sorting and processing of goods. Donated goods shall be accepted only inside the building and during regular business hours; no donated goods shall be left outside. Loading and unloading must take place in a designated area that shall be cleared, cleaned and maintained before closing of business each day.
3. The storefront windows shall be permanently maintained as displays of merchandise in a professional and attractive manner (i.e., unsightly clothing racks and displays shall not be placed adjacent to the windows).
4. Any goods or materials left outside of the store overnight shall be removed immediately upon the thrift store opening the next business day.
5. Outdoor storage or display of donated goods or merchandise shall not be permitted.
6. The subject property shall be maintained free of trash, debris, any all other goods at all times.
7. Thrift stores shall not be located closer than one thousand (1000) feet from another thrift store.

1. In deciding whether to grant a request for additional building height through the Conditional Use Permit process pursuant to Section XI-10-57.04(C)(1), the Planning Commission shall consider site conditions, design elements, and other factors including but not limited to (a) width of right-of-way of principal street; (b) proximity of the site to low- or medium-density residential districts (R1, R2, and R3); (c) building setbacks in relation to proposed building height in excess of 35 feet; and (d) upper story step-backs.

SECTION 6. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 57

Title XI, Chapter 10, Section 57 (Applications), Subsection XI-57.04 (Conditional Use Permits and Minor Conditional Use Permits) of the Milpitas Municipal Code is hereby amended to read as follows:

XI-10-57.04 Conditional Use Permits and Minor Conditional Use Permits

A. Purpose and Intent.

1. The purpose and intent of the Conditional Use Permit process is to provide a review of land uses which would not otherwise be permitted as a matter of right in a zoning district because of their nature, have an impact on the surrounding environment and for the determination of whether or not the proposed use is appropriate for its proposed location.

The Conditional Use Permit process is intended to encourage uses to be located in a manner that is:

- a. Consistent with the City's zones;
 - b. Sensitive to community and neighborhood identity; and
 - c. Minimizes impacts to adjacent uses, including traffic flow; circulation; safety for vehicular and pedestrian traffic; imposition of noises, odors and health and safety hazards upon nearby residential area; provision of adequate light, air and reasonable access; securing safety from fire and other dangers; prevent overcrowding of land; facilitating adequate provision for transportation and in general, to promote the public health, safety, peace, morals, comfort and welfare; prevention of neighborhood deterioration and blight; the objectives of zoning and planning in the community and the effect upon the City's general welfare of this proposed use in relation to surrounding uses and the community. Review of a use may require the consideration of site plan issues related to the use, as well.
2. It is the purpose of the Minor Conditional Use Permit process to provide for the streamlined review of uses that may have an impact on the surrounding environment and require discretionary review, but due to their nature, scale or location, do not require discretionary consideration by the full Planning Commission. Either the Zoning Administrator or Planning staff has the authority to review Minor Conditional Use Permits. The Minor Conditional Use Permit process has as its purpose the same goals for uses described for the Conditional Use Permit process above.

B. Authority.

1. Conditional Use Permits. The Planning Commission has the authority to approve Conditional Use Permits, subject to concurrent review and appeal provisions of Section XI-10-64, Development Review Process, of this Chapter.
2. Minor Conditional Use Permits. Minor Conditional Use Permits may be approved either by the Zoning Administrator or administratively by Planning staff.

- a. Review by the Zoning Administrator. The Zoning Administrator has the authority to Minor Conditional Use Permits for those uses listed in the use tables of the Zoning Ordinance. Such approvals shall be subject to the concurrent review and appeal provisions of Section XI-10-64, Development Review Process, of this Chapter.
- b. Review by Planning staff. Planning staff has the authority to administratively approve Minor Conditional Use Permits for those uses listed in the use tables of the Zoning Ordinance. Such approvals shall be subject to concurrent review and appeal provisions of Section XI-10-64, Development Review Process, of this Chapter. Planning staff-level issued Minor Conditional Use Permits shall not require a public hearing or notice.

C. Applicability.

1. Conditional Use Permits. Conditional Use Permits are required as indicated by the use tables in Residential, Mixed Use, Commercial, Industrial, Institutional, Park and Open Space, and other land use districts of this Chapter. Conditional Use Permits are also required for the following requests:

Table XI-10-57.04-1

Use/Modifications	As provided for in:	Notes
Height		
Height. For buildings that exceed three stories or 35 feet, <u>up to a maximum of six stories or 75 feet</u> , within the MP, <u>C2</u> , and TC districts.	Table XI-10-7.03-1, Industrial Zone Development Standards and Table XI-10-5.03-1 Commercial Zone Development Standards	See Table XI-10-57.04-2 and Section XI-10-5.04(D)(1) See footnote 1
Height. For buildings that exceed six stories or 85 feet within the -OO overlay district up to a maximum of eight stories or 115 feet in height.	Section XI-10-12.02, Gateway Office (-OO) Overlay District	
Height. Permit in R2 and R3 districts, schools, hospitals, sanitariums, institutions, churches and other similar uses allowed under the use regulations of this Chapter, to be erected to a height not exceeding six stories or 75 feet, provided, that the front and side yard requirements for such buildings in the "R3" District are complied with.		
Non-conforming		
Nonconforming buildings and structures	Section XI-10-56.02(C), Additions to, enlargements and moving of nonconforming buildings and structures	See footnote 12
Nonconforming uses, change of use	Section XI-10-56.03, Nonconforming use of buildings and structures	
Parking		
Parking location	Section XI-10-53.13(A), Location of Parking	
Tandem parking	Section XI-10-53.07(D), Tandem Parking Spaces and Section XI-10-53.13(B), Parking Space Size	

Parking Structures	Section XI-10-53(H)(4), Parking Structures	Item # 19.
Temporary Uses and Structures		
Temporary buildings and structures	Section XI-10-13.11(H), Temporary Uses and Structures.	
Other		
Certain industrial uses within commercial districts	Table XI-10-5.02-1, Commercial Zone Uses.	
Exceptions to performance standards	See the zoning districts use standards in XI-10-05, Residential Zones, XI-10-06, Mixed Use Zones, and XI-10-07, Industrial Zones.	
Lot width reduction		
Wireless telecommunications facilities	Section XI-10-13.09, Wireless Telecommunications Facilities, of this Chapter, for specific standards and exempted facilities.	

¹ Properties that are located within 500 feet of the boundary of a Single Family Residential (R1) or One and Two-Family Residential (R2) zone shall not be eligible for a request for a Conditional Use Permit to allow height exceeding the maximum standard for primary buildings as shown in Table XI-10-5.03-1 – Commercial Zone Development Standards.

⁴² In addition, the cumulative floor area included in all such additions or enlargements since the adoption of Ord. No. 38.760 (September 17, 2002) shall not exceed thirty (30%) percent of the floor area contained in said building or structure. Floor area, for the purposes of this Subsection, shall include all habitable space associated with a residential use and shall mean gross floor area associated with any non-residential use. These criteria are established so as not to prolong the life of the original building or structure.

- a. Other Uses. The Planning Commission may, after a public hearing, permit the following uses in districts from which they are prohibited by this Chapter where such uses are deemed essential or desirable to the public convenience or welfare and are in harmony with the various elements or objectives of the General Plan.

However, any of the following uses which are marked with an asterisk shall not be allowed in the designated Hillside Combining District.

- i. Helicopter pads for medical evacuation purposes.
 - ii. Development of natural resources (excluding the drilling for or producing of oil, gas or other hydrocarbon substances) together with the necessary buildings, apparatus, or appurtenances incident thereto.
 - iii. Library or museum, public.
 - iv. Park, playground, or recreational or community center.
 - v. Public utility and public service use or structure.
 - vi. Radio or television transmitter.
 - vii. Reverse vending machines or mobile recycling units except where the lot is being used for residential purposes.
2. Minor Conditional Use Permits. Minor Conditional Use Permits are required as indicated by the use tables in Residential, Mixed Use, Commercial, Industrial, Institutional, Park and Open Space, and other land use districts of this Chapter.

D. Submittal Requirements. Refer to the most recent submittal requirements required by the Planning Division.

E. Review Procedures.

1. Conditional Use Permits.

- a. The Planning Commission shall hold a public hearing on said application upon such notice as is required in Section XI-10-64, Development Review Process, of this Chapter.
- b. After the conclusion of the hearing, the Planning Commission may approve the application, approve it subject to such conditions as the Planning Commission may impose, or disapprove the application.
 - i. The Planning Commission may impose such conditions as it deems necessary to protect the best interests of the surrounding property, of the neighborhood, and as it deems in conformity with the requirements of the General Plan.

2. Minor Conditional Use Permits.

- a. Review by Planning Commission Subcommittee. The Planning Commission Subcommittee shall consider a Minor Conditional Use Permit application when authorized to do so under the use tables of the Zoning Ordinance and hold a public hearing on application upon such notice as is required in Section XI-10-64, Development Review Process, of this Chapter.
 - i. After the conclusion of the hearing, the Planning Commission Subcommittee may approve the application, approve it subject to such conditions as the Planning Commission Subcommittee may impose, or disapprove the application.
 - a) The Planning Commission Subcommittee may impose such conditions as it deems necessary to protect the best interests of the surrounding property, of the neighborhood, and as it deems in conformity with the requirements of the General Plan.
 - b) If the Planning Commission Subcommittee members disagree on a decision for a project, then the project will be placed on the agenda for Planning Commission review, with no additional fees required.
- b. Review by Planning staff. The Planning Division shall administratively consider a Minor Conditional Use Permit when authorized to do so under the use tables of the Zoning Ordinance. Planning staff shall investigate as necessary to determine whether or not the proposed project conforms or may be conditioned to conform fully to the intent of this Chapter. No public hearing or notice shall be required for an administrative level Minor Conditional Use Permit.

If the project does not comply, a notice of correction shall be prepared and returned to the applicant. If the applicant resubmits for review and the project still does not comply with the required regulations or is not in accordance with the approved conditions of approval, the Planning Division shall deny the application.

F. Required Findings for Conditional Use Permits and Minor Conditional Use Permits.

- 1. General Findings. Approval may be granted by the appropriate decision-making body, of a Conditional Use Permit or Minor Conditional Use Permit application in accordance with this Chapter if all of the following findings are made, based on the evidence in the public record:
 - a. The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare;
 - b. The proposed use is consistent with the Milpitas General Plan; and
 - c. The proposed use is consistent with the Milpitas Zoning Ordinance.

In the case of a project located within a Specific Plan, the following additional finding shall be made:

d. The proposed use is consistent with the Specific Plan.

2. Specific Findings. In addition to the general findings required in Subsection (F)(1), above, specific findings shall be made prior to the approval of an application for a Conditional Use Permit for the following requests:

Table XI-10-57.04-2

Use/Modification	Specific Findings
Height	
Height. For buildings that exceed three (3) stories or thirty-five (35) feet within the MP, <u>C2</u> , and TC districts.	The project exhibits exceptional architecture and aesthetic merit to warrant the excess height. <u>1. The design, location, size, and bulk of the proposed building is compatible with the existing and allowed future land uses in the vicinity.</u> <u>2. The building's design provides an appropriate transition in scale to structures in adjacent residential districts.</u> <u>3. The building's design minimizes shadows on public sidewalks, public open spaces, and solar facilities on adjacent parcels through step-backs at upper levels or other design elements.</u> <u>4. The building will not create a dominating visual prominence that is incongruent with the scale and character of the neighborhood.</u> <u>5. The building meets all other development standards for the site where it is located.</u>
Height. For buildings that exceed six (6) stories or eight-five (85) feet within the -OO overlay district up to a maximum of eight (8) stories or one hundred fifteen (115) feet in height.	The project exhibits exceptional architecture and aesthetic merit to warrant the excess height.
Other	
Certain Industrial Uses within Commercial Districts	The site is within close proximity to industrial uses or districts and is suitable for the type and intensity of use that is proposed.

- G. Consideration of Conditional Use Permit or Minor Conditional Use Permit Pending Zoning Amendment. Upon the close of a public hearing before the Planning Commission on the question of a Zoning Amendment to change property from one zone to another, and upon favorable report thereon by the Commission, the Commission may consider such matters and regulations as are set forth in Subsection XI-10-57.04, Conditional Use Permits and Minor Conditional Use Permits, of this Chapter.

The Commission may conditionally impose such requirements and regulations upon the subject property and use as the Commission is authorized to impose by Subsection XI-10-57.04, Conditional Use Permits and Minor Conditional Use Permits, of this Chapter, and may conditionally approve Conditional Use Permits; said requirements and regulations shall be imposed and said approval shall be granted upon the express condition that said property shall be rezoned in accordance with the specific recommendation of the Planning Commission relating to zoning and shall not take effect unless and until said property is rezoned in accordance with specific

recommendation of the Planning Commission and until the Ordinance amending this Chapter in accordance with the specific recommendation of the Planning Commission shall take effect.

- H. Appeals. An appeal of the action on a Conditional Use Permit or Minor Conditional Use Permit shall be reviewed in accordance with Section XI-10-64, Development Review Process, of this Chapter.
- I. Modifications Requested by the Applicant. Projects shall be developed in conformity with project approvals. If the applicant wishes to modify the project, as approved, the applicant shall submit revised plans and any other applicable information to the City for review by the Planning Division. The Planning Division staff shall make one of the following determinations regarding the request:
 - 1. Insignificant Modifications. If the Planning Division determines that the modifications are minor, the modifications may be approved administratively.
 - 2. Significant Modifications With or Without Public Impact or Concern. If the Planning Division determines that the modifications are significant enough to warrant discretionary review and have the potential for public impact or concern, then the modifications shall be referred to the final decision-making authority for the original project in the case of non-staff level issued permits, or to the Planning Commission in the case of staff-level issued Minor Conditional Use Permits. If the original application for a project required a public hearing, then the final decision-making authority's review of modifications shall require a public hearing, in accordance with Section XI-10-64, Development Review Process, of this Chapter.
- J. Modifications, Suspensions and/or Revocations Initiated by the City. Refer to Section XI-10-63.06, Revocation, Suspension, Modification, of this Chapter.
- K. Approval Runs with the Land. The approval of a Conditional Use Permit or Minor Conditional Use Permit shall run with the land, and shall continue to be valid upon a change of ownership of the site to which it applies, unless the decision-making authority places limits on the effective time of the approval.

SECTION 7. 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 8. 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.

RESOLUTION NO. 22-006**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS
RECOMMENDING THAT THE CITY COUNCIL APPROVE ZONING TEXT
AMENDMENT ZA22-0002 AMENDING SECTIONS OF CHAPTER 10 - ZONING OF
THE MILPITAS MUNICIPAL CODE RELATING TO MAXIMUM HEIGHTS FOR
NON-RESIDENTIAL BUILDINGS IN CERTAIN COMMERCIAL ZONES; AND
DETERMINING THE ORDINANCE TO BE EXEMPT FROM ENVIRONMENTAL
REVIEW PURSUANT TO CEQA GUIDELINES SECTIONS 15061(B)(3) AND 15183**

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, clear and specific zoning regulations, including development standards and findings for project approval, are important elements in a municipal government’s process of encouraging and approving high-quality development projects that are compatible with surrounding areas; and

WHEREAS, the City’s Zoning Ordinance, Chapter 10 of Title XI of the Milpitas Municipal Code, does not currently include standards for the maximum height of primary buildings in the C2 General Commercial, HS Highway Services, or TC Town Center Zoning Districts; and

WHEREAS, the City wishes to enact appropriate regulations applying to the maximum height of primary buildings in the C2, HS, and TC zones, and further to conditionally allow additional building height in the C2 and TC zones, when such buildings are appropriately located and well designed to avoid negative impacts on surrounding properties and public spaces; and

WHEREAS, the City has prepared a Zoning Amendment (“Amendment”) to the City’s Municipal Code, including Section 2.03 (“Definitions”), Section 5.03 (“Commercial Zone General Development Standards”), Section 5.04 (“Commercial Zone Special Development Standards”), and Section 57.04 (“Conditional Use Permits and Minor Conditional Use Permits”), of Title XI, Chapter 10–Zoning; and

WHEREAS, the Planning Commission makes and accepts as its own the findings set forth in this resolution; and

WHEREAS, the Planning Commission is an advisory body to the City Council; and

WHEREAS, the Planning Commission hereby finds and determines that the project is exempt from further CEQA review pursuant to CEQA Guidelines section 15061(b)(3) (common sense exemption); and

WHEREAS, as a separate and independent basis, the Planning Commission hereby finds and determines that the project is exempt from further CEQA review pursuant to CEQA Guidelines section 15183 (projects consistent with a Community Plan, General Plan or Zoning); and

WHEREAS, on June 8, 2022, the Planning Commission held a duly noticed public hearing on the subject application, at which all those in attendance were given the opportunity to speak on the Zoning Text Amendment; and

WHEREAS, the Planning Commission has considered all the written and oral testimony presented at the public hearing in making its decision; and

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

SECTION 1. Recitals

The Planning Commission 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 Planning Commission. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. CEQA Finding

The Planning Commission finds, under CEQA Guidelines, Section 15061(b)(3), that this Ordinance is exempt from further environmental review because it is the adoption of an ordinance amending zoning regulations but would not permit any particular project. Therefore, it can be seen with certainty that there is no possibility that the Ordinance in question may have a significant effect on the environment; accordingly, the Ordinance is not subject to review under CEQA. As a separate and independent basis, the Project is also exempt from further environmental review pursuant to CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan or Zoning).

SECTION 3. Findings for Zoning Amendment (Milpitas Municipal Code, Subsection XI-10-57.02(G)(3))

The Planning Commission makes the following findings based on the evidence in the public record in support of Zoning Text Amendment No. ZA22-0002:

- 1. The proposed amendment is consistent with the General Plan.*

The proposed zoning amendments are consistent with the Milpitas General Plan. Specifically, they would serve to implement several policies in the Community Design Element that relate to good design, context-sensitive development, and compatibility of new development with surrounding areas. The amendments set maximum by-right height for primary buildings in three commercial zoning districts, where no maximum height standards are currently stated. They provide specific and detailed guidance about how a

request for additional conditionally permitted height should be evaluated and what factors should form the basis of a decision on such a request. Moreover, the amendments include well-crafted language for findings for approval of conditional requests for additional building height, which would serve to ensure that contextual factors (e.g. neighborhood scale and width of primary street right-of-way) and project-specific design factors (such as building setbacks and upper story building step-backs) are considered as part of development projects involving taller buildings in commercial areas, as demonstrated in Table 1.

Table 1: General Plan Consistency

Policy	Conformance
<i>Community Design Element Policy CD 1-1(B):</i> Require development projects to...incorporate a context-sensitive design approach that considers the scale and existing and desired character of adjacent uses and the surrounding neighborhood or district.	The proposed zoning amendments would allow additional building height in some commercial zones (C2 and TC) subject to a CUP – up to 35 feet or three stories more than what is currently permitted by right. It is very important to ensure that proposed development projects involving taller buildings are designed to respect and fit well with the existing area context and to maximize compatibility with surrounding buildings, streets, and open spaces. These zoning amendments are drafted to include specific and detailed guidance about how a request for additional building height should be considered. The criteria and findings for review and approval focus on context sensitivity (e.g. transitions to nearby lower-density residential areas, size, and scale of proposed buildings in relation to surrounding streets and buildings) and design treatments that minimize or avoid shadows or other negative impacts on surrounding properties.

Policy	Conformance
<i>Community Design Element Policy CD 2-2:</i> Continue to develop and implement design standards and guidelines for residential, non-residential, and infrastructure development...to provide design and site planning approaches....and site planning criteria that will add design excellence, visual quality and interest to the community.	The proposed amendments would add design standards for non-residential development to the Zoning Code, allowing for additional discretionary building height (where appropriate). These draft standards emphasize good design for taller buildings and would encourage buildings that are well-designed in relationship to their surroundings, which would enhance the visual quality of the built environment.
<i>Community Design Element Policy CD 3-3:</i> Ensure that new development and redevelopment reinforces desirable elements of its neighborhood, district, or center, including architectural style, scale, and setback patterns.	The proposed amendments, including development standards, design criteria for taller buildings, and findings for approval for discretionary additional building height, are intended to promote compatible building scale and encourage new development that fits well with the surrounding neighborhood or district.
<i>Community Design Element Policy CD 5-1:</i> Design new development to reflect the character of the predominant existing character of the same type in the surrounding area through the regulation of lot size, street frontage, height, building scale, siting/setbacks, and building orientation.	While the proposed amendments would conditionally allow for greater building heights than are currently allowed by right in certain commercial zoning districts, the underlying goal and purpose of the draft changes is to address building height and scale as they relate to and affect the character of the surrounding area. By tying approval of a request for discretionary additional building height to consideration of site-specific conditions such as street frontage, setbacks, and the scale and height of adjacent structures, the proposed amendments seek to maintain and protect the character of existing non-residential areas as well as that of adjacent residential areas.

2. *The proposed amendment will not adversely affect the public health, safety and welfare.*

The proposed zoning amendments are intended to promote the public interest by ensuring that proposed taller commercial buildings have minimal or no negative impacts on adjacent neighborhoods and commercial districts in terms of scale, bulk, shadows, etc. Requiring proposed new buildings with height exceeding the maximum allowed by right (35 feet or three stories) to respond well to the context of surrounding development, and to incorporate design solutions that help them fit in well with adjacent areas, will not result in adverse effects on public health, safety, or welfare.

SECTION 4: Planning Commission Action

The Planning Commission of the City of Milpitas hereby adopts Resolution No. 22-006 recommending that the City Council adopt Zoning Text Amendment ZA22-0002 based on the above Findings. The Planning Commission also recommended that the City Council consider adding a provision to the proposed text amendments to limit the height of buildings located within 100 feet of a lower-density residential neighborhood to two stories or 30 feet, which is consistent with the maximum permitted height of buildings in the City's lower-density residential zoning districts (R1 and R2). In addition, the Planning Commission recommended that discretionary approval of additional building height in the C2, HS and TC zones (i.e., with approval of a CUP) should not apply within 100 feet of any boundary with a R1 or R2 residential zone.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on June 8, 2022.

DocuSigned by:
Chair Bill Chuan Jun-10-2022
16D00AF0F204461...
Bill Chuan, Planning Commission Chair

Resolution No. 22-006**Page 6**

Item # 19.

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on June 8, 2022, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Mercedes Albana			✓	
Dipak Awasthi	✓			
Bill Chuan	✓			
Larry Ciardella	✓			
Alexander Galang	✓			
Sonia Medina-Ashby			✓	
Zeya Moshin	✓			



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Draft FY 2021-2022 Community Development Block Grant's (CDBG) Consolidated Annual Performance and Evaluation Report (CAPER) (Staff Contact: Alex Andrade, Director of Economic Development, 408-586-3046; Robert Musallam, Housing and Neighborhood Services Administrator, 408-586-3275)
Category:	Public Hearings-Community Development
Meeting Date:	9/20/2022
	<u>Recommendation:</u> 1. Open the public hearing, hear testimony, then move to close the public hearing. 2. Approve the draft FY 2021-2022 Community Development Block Grant (CDBG) Consolidated Annual Performance and Evaluation Report (CAPER). 3. Authorize the City Manager, or designee, to make any necessary changes and to submit the approved draft FY 2021-2022 CAPER to the U.S. Department of Housing and Urban Development (HUD) to comply with CDBG requirements.

BACKGROUND:

Every September, the Consolidated Annual Performance and Evaluation Report (CAPER) is required to be submitted to the U.S. Department of Housing and Urban Development (HUD). The CAPER summarizes the accomplishments of the past funding cycle and the progress towards the priority needs and goals identified in the Consolidated Plan. The 2021-2022 CAPER describes the City's activities for FY 2021-2022 and the accomplishment toward meeting the priority needs and goals from the 2017-2022 Consolidated Plan (Attachment A). The CAPER further describes actual expenditures and outcomes relative to the targets in the FY 2021-2022 Annual Action Plan. This CAPER is the fifth and last progress report for the 2017-2022 Consolidated Plan that was approved by the City Council in 2017.

ANALYSIS:

In FY 2021-2022, CDBG allocations comprised of the City's original formula allocation of \$682,977, CDBG-CV allocation of \$582,236, and prior year unused funds in the amount of \$17,027.45. In total, the City allocated \$1,282,240.45 to 16 organizations for a total of 21 activities.

The CAPER identifies some of the major accomplishments in 2021-2022:

- **Catholic Charities Long Term Care Ombudsman Program** made 312 unduplicated visits to Milpitas residents in long-term care.
- **Child Advocates of Silicon Valley** served and connected 7 Milpitas foster children youth and children to Court Appointed Special Advocates.
- **Filipino American Chamber of Commerce** provided direct aid to 15 microenterprises in Milpitas.
- **LifeMoves-Villa Shelter** provided shelter and intensive care management services to 21 Milpitas residents.
- **LifeMoves-Meal Delivery** served "grab and go" meals to 21 homeless Milpitas.
- **Lighthouse of Hope Counseling Center** provided 7 Milpitas residents with counseling and psychological support.
- **The Milpitas Senior Center (Technology)** assisted 3 Milpitas seniors who need continued support and education in technology to help bridge the digital divide.
- **Next Door Solutions to Domestic Violence** provided 47 residents, who were victims of domestic violence, supportive services and emergency shelter.
- **Next Door Solutions to Domestic Violence (Capital-Shelter)** provides Milpitas survivors of Domestic abuse with a safe shelter to reside. Repairs to the flooring at the Shelter Next Door were completed

will allow future Milpitas residents to have safe shelter, food, and support services.

- **The Health Trust Meals on Wheels Program** provided 3,281 hot meals to 19 homebound, low-income seniors. Additionally, they completed 469 wellness checks for Milpitas seniors.
- **Project Sentinel** handled 7 fair housing cases and 24 individuals benefitted from fair housing services.
- **Pragnya** provided support to 132 children, youth, and adults from the Special Needs community.
- **Rebuilding Together Silicon Valley** made housing repairs for 24 Milpitas households.
- **Senior Adults Legal Assistance** provided free legal services to 22 qualified Milpitas seniors.
- **Silicon Valley Independent Living Center** provided housing services for persons with disabilities to 71 individuals.
- **Silicon Valley Independent Living Center** served 280 Milpitas residents through the Rent Relief Program.
- **Sourcewise** provided 66 nutritious home-delivered meals to vulnerable Milpitas seniors who have been impacted by the pandemic.
- **Terrace Gardens Senior Housing** replaced the existing kitchenette.
- **Terrace Gardens Senior Housing** provided meal delivery services to 148 residents in lieu of community dining, due to the COVID-19 pandemic.
- **YWCA Silicon Valley** provided supportive services and emergency shelter to 56 victims of domestic violence. Additionally, they responded to 65 crisis calls via the 24-hour crisis line and served 147 persons with crisis counseling identified by the Milpitas Police Department.
- **YWCA Silicon Valley** partnered with MUSD to create a domestic violence prevention curriculum for MUSD students that served 457 students through their Building Healthy Relationships program.

As anticipated, some CDBG subgrantees experienced a residual impact on their ability to meet program objectives in Fiscal Year 2021-2022 due to the COVID-19 pandemic. Reasons include residents being wary of in-person programming and capacity restrictions to facilities. Although in-person workshops saw a decrease in participation, virtual workshop participation numbers grew. In Fiscal Year 2021-2022, the Milpitas Senior Center supported seniors in technological training virtually, rather than in person as done in previous years.

Although the impacts of the COVID-19 pandemic are still being felt in our community, several subgrantees far exceeded the expected outcomes for Fiscal Year 2021-2022. The outcomes presented indicate to our municipality that at-risk populations continue to have an increased need for services. Throughout the program year, our subgrantees demonstrated great flexibility, care, and support through their continued efforts to provide essential services to our most vulnerable Milpitas residents.

POLICY ALTERNATIVE(S):

Not applicable.

FISCAL IMPACT:

There is no fiscal impact to the City budget other than staff time related to this item.

California Environmental Quality Act (CEQA):

The actions being considered have no potential for causing a significant effect on the environment and are exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3).

RECOMMENDATION:

1. Open the public hearing, hear testimony, then move to close the public hearing.
2. Approve the draft FY 2021-2022 Community Development Block Grant (CDBG) Consolidated Annual Performance and Evaluation Report (CAPER).
3. Authorize the City Manager, or designee, to make any necessary changes and to submit the approved draft FY 2021-2022 CAPER to the U.S. Department of Housing and Urban Development (HUD) to comply with CDBG requirements.

Attachment:

Attachment A: Draft FY 2021-2022 CAPER

Attachment A
City of Milpitas
Consolidated Annual Performance and Evaluation Report (CAPER) FY 2021-2022

TABLE OF CONTENTS

CR-05 - Goals and Outcomes.....	2
CR-10 - Racial and Ethnic composition of families assisted	9
CR-15 - Resources and Investments 91.520(a)	10
CR-20 - Affordable Housing 91.520(b)	14
CR-25 - Homeless and Other Special Needs 91.220(d, e); 91.320(d, e); 91.520(c)	17
CR-30 - Public Housing 91.220(h); 91.320(j)	
CR-35 - Other Actions 91.220(j)-(k); 91.320(i)-(j).....	
CR-40 - Monitoring 91.220 and 91.230	25
CR-45 - CDBG 91.520(c).....	25

CR-05 - Goals and Outcomes

Progress the jurisdiction has made in carrying out its strategic plan and its action plan. 91.520(a)

Below is a description of the progress the City of Milpitas has made in achieving the goals outlined in the Fiscal Year 2021-2022 Annual Action Plan. The City achieved the majority of its annual goals and is on track to meet most of the five-year goals outlined in the Consolidated Plan (2017-2022). The following goals are the basis for the activities approved and funded in the Fiscal Year 2021-2022 Annual Action Plan:

- Maintain and Preserve Existing Housing
- New Affordable Housing
- Affordable Housing Rental Rehabilitation
- Community Funding/Public Services
- Public services for low- and moderate-income residents at risk of eviction
- Fair Housing
- Public Services for Children and Youth
- Public Services for Seniors
- Public services for Domestic Violence Support
- Public Improvements including accessibility and improving public facilities
- Assist Microenterprises and Small Businesses
- Explore the use of HUD Section 108 Loan Guarantee Program

Below highlights the funded organizations' accomplishments:

- **Catholic Charities' Long Term Care Ombudsman Program** advocates for the rights of seniors and disabled residents in long-term care facilities and made 312 unduplicated visits to Milpitas residents in long-term care.
- **Child Advocates of Silicon Valley** is the only agency in the County that provides court-appointed volunteers (CASA) to each foster child. Child Advocates of Silicon Valley served and connected 7 Milpitas foster children youth and children to CASAs.
- **Filipino American Chamber of Commerce** provided hands-on training to 15 Milpitas small businesses on how to create and/or revamp their websites and create marketing strategies.
- **LifeMoves-Villa Shelter** provides shelter and intensive care management services to Milpitas Residents across its facilities in Santa Clara County. Completed repairs and rehabilitation to the Villa Shelter facility allowed LifeMoves to serve 21 Milpitas residents.
- **LifeMoves-Meal Delivery** served "grab and go" meals to 21 homeless Milpitas residents during the pandemic to reduce the risk of virus transmission.
- **Lighthouse of Hope Counseling Center** provides counseling, psychological support, and education to the Milpitas community. Lighthouse of Hope served 7 Milpitas residents.
- **The Milpitas Senior Center (Technology)** assisted 3 Milpitas seniors who need

continued support and education in technology to help bridge the digital divide.

- **Next Door Solutions to Domestic Violence** provided 47 residents supportive services and emergency shelter to victims of domestic violence.
- **Next Door Solutions to Domestic Violence (Capital-Shelter)** provides Milpitas survivors of Domestic abuse with a safe shelter to reside. Repairs to the flooring at the Shelter Next Door were completed and will allow future Milpitas residents to have safe shelter, food, and support services.
- **Project Sentinel** is contracted to handle fair housing and tenant-landlord cases. Project Sentinel handled 7 fair housing cases for the year, and 24 individuals benefitted from fair housing services.
- **Pragnya** provided support to 132 children, youth, and adults from the Special Needs community by creating social-emotional connections and preventing further isolation due to COVID-19.
- **Rebuilding Together Silicon Valley** preserves affordable housing by providing safety, energy efficiency, accessibility repairs, and improvements to qualified low-income homeowners. Rebuilding Together made housing repairs for 24 Milpitas households.
- **Senior Adults Legal Assistance** provided free legal services to 22 qualified Milpitas seniors.
- **Silicon Valley Independent Living Center** provided housing services for persons with disabilities to 71 individuals.
- **Silicon Valley Independent Living Center** served 280 Milpitas residents through the Rent Relief Program.
- **Sourcewise** provided 66 nutritious home-delivered meals to vulnerable Milpitas seniors who have been impacted by the pandemic.
- **Terrace Gardens Senior Housing** is an affordable housing rental apartment for seniors. Terrace Gardens met its goal of rehabilitating the existing kitchenette.
- **Terrace Gardens Senior Housing** provided meal delivery services to 148 residents in lieu of community dining, due to the COVID-19 pandemic.
- **The Health Trust's Meals on Wheels Program** provided 3,281 hot meals to 19 homebound, low-income seniors. Additionally, they completed 469 wellness checks for Milpitas seniors.
- **YWCA Silicon Valley** provided supportive services and emergency shelter to 56 victims of domestic violence. Additionally, they responded to 65 crisis calls via the 24-hour crisis line and served 147 persons with crisis counseling identified by the Milpitas Police Department.
- **YWCA Silicon Valley** partnered with MUSD to create a domestic violence prevention curriculum for MUSD students. 457 students were served through their Building Healthy Relationships program.

Comparison of the proposed versus actual outcomes for each outcome measure submitted with the consolidated plan and explain, if applicable, why progress was not made toward meeting goals and objectives. 91.520(g)

As anticipated, some CDBG subgrantees experienced a residual impact on their ability to meet program objectives in Program Year 2021 due to the COVID-19 pandemic. Reasons include residents being wary of in-person programming and capacity restrictions to facilities. Both YWCA (MUSD Partnership) and LifeMoves-Meal Delivery reported challenges due to capacity restrictions. Reduced capacity at certain facilities continued post-pandemic to promote social distancing and a safe, hygienic environment. Although in-person workshops saw a decrease in participation, virtual workshop participation numbers grew. In Program Year 2021, the Milpitas Senior Center supported seniors in technological training virtually, rather than in person as done in previous years.

Although the impacts of the COVID-19 pandemic are still being felt in our community, several subgrantees far exceeded the expected outcomes for Program Year 2021. The outcomes presented indicate to our municipality that at-risk populations continue to have an increased need for services. Throughout the program year, our subgrantees demonstrated great flexibility, care, and support through their continued efforts to provide essential services to our most vulnerable Milpitas residents.

Categories, priority levels, funding sources and amounts, outcomes/objectives, goal outcome indicators, units of measure, targets, actual outcomes/outputs, and percentage completed for each of the grantee's program year goals.

Goal	Category	Source / Amount	Indicator	Unit of Measure	Expected – Strategic Plan	Actual – Strategic Plan	Percent Complete	Expected – Program Year	Actual – Program Year	Percent Complete <i>Item # 20.</i>
Maintain and Preserve Existing Housing	Affordable Housing Non-Homeless Special Needs	\$500,000	Owner-occupied units rehabilitated or improved	Household housing unit	38	156	411%	22	24	109%
New Affordable Housing	Affordable Housing	\$100,000	Rental units constructed	Units Constructed	100	100	100%	n/a	n/a	n/a
Affordable Housing Rental Rehabilitation	Non-housing community development	\$300,000	Rental units rehabilitated	Units rehabilitated	148	1295	875%	148	148	100%
Community Funding/Public Services	Homeless Non-Homeless Special Needs	\$125,000	Number of persons assisted	Persons assisted	1145	2554	223%	235	231	98%
Public services for low- and moderate-income residents at risk of eviction	Non-homeless special needs Homeless	\$391,400	Homelessness Prevention	Persons assisted	225	521	232%	250	280	112%
Fair Housing	Affordable Housing Non-homeless special needs	\$50,000	Number of persons assisted	Persons assisted	16	197	1231%	20	20	100%
Public Services for Children and Youth	Non-homeless special needs Non-housing community development	\$75,000	Number of persons assisted	Persons assisted	175	2083	1190%	507	464	92%

Public Services for Seniors	Non-homeless special needs Non-housing community development	\$75,000	Number of persons assisted	Persons assisted	120	1985	1654%	350	570	163%
Public services for Domestic Violence Support	Non-homeless special needs	\$50,000	Number of persons assisted	Persons assisted	50	393	786%	80	103	129%
Public Improvements including accessibility and improving public facilities	Non-housing community development	\$80,000	Number of persons assisted with improved access to a facility or infrastructure benefit	Persons assisted	5000	102	2%	28	29	104%
Assist Microenterprises and Small Businesses	Non-housing community development	\$200,000	Businesses assisted	New Businesses assisted	38	53	139%	10	15	150%
Explore the use of HUD Section 108 Loan Guarantee Program	Affordable Housing Homeless Non-housing community development	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

Table 1 - Accomplishments – Program Year & Strategic Plan to Date | Sections labeled TBD will be reported on the FY20-21 CAPER

Assess how the jurisdiction's use of funds, particularly CDBG, addresses the priorities and specific objectives identified in the plan, giving special attention to the highest priority activities identified.

In June 2020, the City Council substantially amended the Consolidated Plan to address key priorities City residents needed as a result of the COVID-19 pandemic. The CDBG priorities are as follows:

- Maintain and Preserve Existing Housing
- New Affordable Housing
- Affordable Housing Rental Rehabilitation
- Community Funding/Public Services
- Public services for low- and moderate-income residents at risk of eviction
- Fair Housing
- Public Services for Children and Youth
- Public Services for Seniors
- Public services for Domestic Violence Support
- Public Improvements including accessibility and improving public facilities
- Assist Microenterprises and Small Businesses
- Explore the use of HUD Section 108 Loan Guarantee Program

The City established three new priorities: (1) Public services for low- and moderate-income residents at risk of eviction, (2) assist microenterprises and small businesses, and (3) explore the use of HUD section 108 loan guarantee program.

The City was able to achieve most of its goals outlined in the 2021 Annual Action Plan (AAP) through the CDBG formula and CDBG-CV3 funding. The City received a total of \$1,282,240.45 for Program Year 2021. CDBG formula funds for Program Year 2021 totaled \$682,977, CDBG-CV3 funds totaled \$582,236, and unused CDBG formula funds for Program Year 2019 totaling \$17,027.45. In total, 1,876 persons were assisted in this fiscal year. Out of the 1,876 Milpitas residents served, 570 were seniors, which makes up 30% of the population served; 464 were children and youth, which makes up 25% of the population served; and 103 were survivors of domestic violence, which makes up 5% of the population served.

A high emphasis on providing public services for the Milpitas senior population resonates City-Wide. Six public service allocations totaling \$166,500 were approved benefiting seniors who are aging in place with long-term care, hot meals, housing search assistance, and services that help bridge the digital divide and free legal services. Additionally, Terrace Gardens, an 100% affordable senior housing development was allocated \$11,000 in CDBG funding for necessary capital improvements to the property. About 14% of total CDBG funds were allocated to serving the Milpitas senior population.

Additionally, the City allocated \$62,839.45 for public service activities to benefit victims of domestic violence, \$52,500 in public services for children and youth, and \$56,290 to Project Sentinel to provide Fair Housing counseling to at-risk tenants in Milpitas.

Through the combination of the CDBG formula and CDBG-CV3 funds, in total, 280 Milpitas residents were provided rental assistance through our partnership with the Silicon Valley Independent Living Center. A total of \$327,696 was allocated to public services for low- and moderate-income Milpitas residents at risk of eviction. The total allocation makes up about 26% of the funds.

One of the many hardships small business owners in Milpitas faced was keeping their doors open for business. A total of \$15,000 was allocated to reinvigorate the operations of small businesses in Milpitas. Through our partnership with the Filipino American Chamber of Commerce, 15 small businesses that fall within the LMI income limits received assistance with business mentoring and disaster planning/preparation.

DRAFT

CR-10 - Racial and Ethnic composition of families assisted

Describe the families assisted (including the racial and ethnic status of families assisted).

91.520(a)

	CDBG
White	583
Black or African American	146
Asian	518
American Indian or American Native	3
Native Hawaiian or Other Pacific Islander	27
American Indian/Alaskan Native & White	2
Asian & White	1
Black/African American & White	8
A. Indian/Alaskan Native & Black/African A.	44
Other Multi-Racial	544
Total	1,876
Hispanic	242
Not Hispanic	1,634

Table 2 – Table of assistance to racial and ethnic populations by source of funds

Narrative

Table 2 depicts the accurate racial and ethnic categories of total individuals served in Program Year 2021 using the CDBG formula and CDBG-CV3 funds. A total number of 637 Milpitas residents were assisted with CV3 funds. In total, the City's CDBG program served 1,876 individuals in Program Year 2021. Of those individuals, approximately 31% were White; 8% were Black or African American; 28% were Asian; 5% were either American Indian/American Native, Native Hawaiian/Pacific Islander, American Indian/ Alaskan Native & White, Asian and White, Black/African American and White. 29% of individuals reported as "Other Multi-Racial." Of the 1,876 individuals served, approximately 13% were Hispanic.

CR-15 - Resources and Investments 91.520(a)**Identify the resources made available**

Source of Funds	Source	Resources Made Available	Amount Expended During Program Year
CDBG	CDBG	\$682,977	\$668,819
HOME	HOME		
HOPWA	HOPWA		
ESG	ESG		
Other	Other	\$599,263.45	\$563,342.74

Table 3 - Resources Made Available**Narrative**

The attached PR26 Program Year 2021 report shows total expenditures of \$685,773.98 in CDBG funds. These expenditures include Program Year 2019 unused funds reallocated for COVID-19 activities. In accordance with HUD guidance, the \$17,027.45 amount in unused Program Year 2019 funds was reallocated along with the \$582,236 amount in CDBG-CV3 funds totaling \$599,263.45. The report does not make this distinction. Table 3 depicts the allocation breakdown as approved by HUD.

The attached PR 26 CDBG-CV3 Financial Summary Report shows total program expenditures of \$944,317.43. The remaining balance of \$35,829.57 will be used during Program Year 2022 through contract amendments of Program Year 2021 activities to continue providing services to Milpitas residents in Program Year 2022.

Some of the subgrantees experienced challenges in programming during Program Year 2021, that lead them to not utilize funds completely. Terrace Gardens-Meal Delivery had a remaining balance of \$23,500 due to using funds for Meal Delivery only and not PPE materials as expected. The \$23,500 will be used to continue the Food Boxes Program in Program Year 2022. The Milpitas Senior Center had a remaining balance of \$10,000 due to delays in setting up an agreement with a technological training organization. They instead used volunteers to assist seniors with information and communication technology training. The funds are to be used to engage with Anew Vista, a program that specializes in working with seniors in bridging the digital divide, by October 2022.

Identify the geographic distribution and location of investments

Target Area	Planned Percentage of Allocation	Actual Percentage of Allocation	Narrative Description
City of Milpitas	100%	100%	

Table 4 – Identify the geographic distribution and location of investments

Narrative

The City of Milpitas has not established specific geographic target areas. The City attempts to provide resources to serve low- to moderate-income persons, citywide.

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Leveraging

Explain how federal funds leveraged additional resources (private, state and local funds), including a description of how matching requirements were satisfied, as well as how any publicly owned land or property located within the jurisdiction that were used to address the needs identified in the plan.

The City anticipates CDBG funds to remain constant at about the \$600,000 per year level. In conjunction with this federal program, the City will receive additional funding in the form of program income – payments paid into a revolving loan fund.

In Program Year 2021, the City of Milpitas amended the Program Year 2019 Annual Action Plan (AAP) in order to utilize unused funds in the amount of \$582,236. In accordance with HUD guidelines, the City allocated these funds to prevent, prepare for, or respond to the Coronavirus pandemic.

In 2020, the City of Milpitas executed a professional services agreement with the Silicon Valley Independent Living Center (SVILC) for the management of the Santa Clara County of Emergency Food and Shelter Program (EFSP) Grant for the Rent Relief Program and Utility Assistance. Under the Program Year 2021 phase, the City of Milpitas received a grant award of \$95,927 for the Rent Relief Program and utility assistance.

Under the American Rescue Plan Act (ARPA) Investment Plan, rent relief eligibility will be expanded to moderate-income residents and the City of Milpitas will now offer mortgage relief. The program will be funded at \$1,100,000, or \$550,000 per year for two years through ARPA funds. The existing Rent Relief Program has helped over 300 Milpitas residents through emergency hardship relief, eviction prevention, domestic violence relocation, child and family homelessness relief, and Section 8 good faith deposits.

Since March 2021, the City of Milpitas has contracted with WeHOPE's Dignity on Wheels program. Dignity on Wheels provides a mobile trailer with shower, laundry, restroom, and on-site case management. The case manager helps connect clients to resources and services such as identification document needs and identification renewal support. At each session, WeHOPE provides supplies that include towels, laundry pods, hair and body wash, hygiene kits, and occasional clothing donations. To date, the City has spent \$71,552 of non-CDBG funding on WeHOPE's Dignity on Wheels program which has serviced over 411 individuals.

The City of Milpitas has also allocated \$200,000 to partner with the County of Santa Clara's Office of Supportive Housing to provide homeless outreach, engagement, and street-based case management services with the goal of connecting unhoused residents of the City of Milpitas to housing and other resources. The County's Homeless Engagement and Access Team lead the City's homeless outreach efforts in the community and are regularly on-site at the Dignity on Wheels service location to conduct assessments and further connect clients with a countywide network of services.

In coordination with the County Continuum of Care (CoC), the City is also exploring the use of Permanent Local Housing Allocation (PHLA) funds. Through the CoC, the City was allocated \$609,445 in PHLA funding. The City is currently working with the CoC to determine the eligible activities and where the City could best deploy these funds, but among the eligible activities is assisting persons who are experiencing or at-risk of homelessness.

The City's Housing Authority currently owns a commercial property located on South Main Street. One of its tenants is the Milpitas Food Pantry. The City currently assists the Food Pantry by collecting \$1 per month in rent so the Food Pantry can focus on serving the most vulnerable of community members. In January 2022, the City Council directed staff to sell the parcel of land where the Food Pantry leases a space. City staff has been in communication with the Food Pantry, and other businesses, on this parcel to provide guidance and resources as the businesses look to relocate.

The City of Milpitas offers a Below Market Rate (BMR) program to assist very-low, low-, and moderate-income households in becoming homeowners. Our BMR inventory consists of dwelling units acquired through the City's Affordable Housing Ordinance. The City's basic eligibility requirements to participate include being a first-time homebuyer, having the ability to provide at least a 10 percent required down payment, and for a household's income to not exceed very-low, low-, and moderate-income as defined by the California Department of Housing and Community Development (HCD). In Program Year 2021, a total of 5 BMR dwelling units (4 townhomes and 1 condominium) were sold to qualified first-time home buyers.

CR-20 - Affordable Housing 91.520(b)

Evaluation of the jurisdiction's progress in providing affordable housing, including the number and types of families served, the number of extremely low-income, low-income, moderate-income, and middle-income persons served.

	One-Year Goal	Actual
Number of Homeless households to be provided affordable housing units	0	0
Number of Non-Homeless households to be provided affordable housing units	420	452
Number of Special-Needs households to be provided affordable housing units	0	0
Total	420	452

Table 5 – Number of Households

	One-Year Goal	Actual
Number of households supported through Rental Assistance	250	280
Number of households supported through The Production of New Units	0	0
Number of households supported through Rehab of Existing Units	170	172
Number of households supported through Acquisition of Existing Units	0	0
Total	420	452

Table 6 – Number of Households Supported

Discuss the difference between goals and outcomes and problems encountered in meeting these goals.

The City of Milpitas continues to show progress in providing affordable housing projects and programs to residents. There are various programs in the City that aims to provide support to LMI clientele. One of the facilities that provide affordable housing is Terrace Gardens.

Terrace Gardens is a deed-restricted, very low and low-income senior housing facility. In Program Year 2021, Terrace Gardens received \$11,000 to rehabilitate the kitchenette in the Community Room. The Community Room is an essential place for the staff to hold informative, fun, and teaching opportunities for low-income senior residents. With the completion of the rehab project, a total number of 148 households were supported.

Another program the City offers to support residents is rent relief assistance through our partnership with the Silicon Valley Independent Living Center (SVILC). SVILC has been administering the City's Rent Relief Program, which offers low- and moderate-income residents rental assistance to prevent eviction, avoid community displacement, and remain housed. SVILC received a total of \$327,696 in funds for Program Year 2021. A total of 280 clients were served, exceeding the annual goal of serving 250 clients.

One of the goals the City has is to provide rehabilitation funding for affordable housing projects. As part of the City's Home Rehabilitation program, the City partners with Rebuilding Together Silicon Valley (RTSV), to provide Milpitas residents with emergency repairs for qualified low-income homeowners. The program is designed to preserve affordable housing by providing safety, energy efficiency, accessibility repairs, and improvements to qualified households. In Program Year 2021, RTSV received \$173,970 in funding and this provided housing repairs for 24 Milpitas households, which exceeds the annual goal of serving 22 households.

Discuss how these outcomes will impact future annual action plans.

The goal of creating more affordable housing will continue to be a goal in future action plans. However, the increasingly high cost of construction coupled with surging land costs have made the creation of deeply affordable housing (low, very-low, and extremely-low income) very challenging.

Include the number of extremely low-income, low-income, and moderate-income persons served by each activity where information on income by family size is required to determine the eligibility of the activity.

Number of Households Served	CDBG Actual	HOME Actual
Extremely Low-income	716	0
Low-income	942	0
Moderate-income	145	0
Total	1,876	0

Table 7 – Number of Households Served

Narrative Information

In Fiscal Year 2021-2022, the City of Milpitas served a total of 1,876 households. In total, 38% were considered extremely low-income; 50% were considered low-income; and 8% were considered moderate-income. The number of non-LMI households served was 73. The majority of non-LMI households were served by Catholic Charities (66 households). Catholic Charities reported an increase in phone call volume once the COVID-19 pandemic hit. Phone calls received by Milpitas residents were counted as households served by the organization.

In October 2019, the City of Milpitas initiated their Rent Relief program which provides various forms of financial relief to residents and families who have emergency housing needs. The program was established to serve low- and moderate-income residents, families with

dependent children, seniors, disabled individuals, victims of domestic violence, emancipated foster youth, and any resident occupying a subsidized unit. In June 2021, City Council approved the Program Year 2021 Community Development Block Grant (CDBG) funding which allocated a total of \$327,696 in rent relief funding. In August 2021, the City of Milpitas City Council expanded the rent relief program to include mortgage assistance. This program will be funded at \$1,100,000, or \$550,000 per year for two years through ARPA funds.

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CR-25 - Homeless and Other Special Needs 91.220(d, e); 91.320(d, e); 91.520(c)

Evaluate the jurisdiction's progress in meeting its specific objectives for reducing and ending homelessness through:

Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs.

In October 2019, the City created a Pilot Rent Relief Program and allocated \$100,000 from the City's Affordable Housing Fund to assist the City's at-risk population to prevent eviction, and displacement, and to provide financial support for other critical housing needs. In March 2020, with the onset of the COVID-19 pandemic, the City allocated an additional \$100,000 from the Affordable Housing Fund to assist those who had been affected by the pandemic and whose housing situations were at risk. With these funds, the City assisted in the prevention of 40 households and 140 Milpitas residents from potential eviction.

The City further endorsed the success of the pilot program by permanently establishing the Rent Relief Program and allocated \$725,607 in CDBG funding over the last two subsequent program years (2020 and 2021). The success of this program could not be understated as over 100 families and over 300 residents were assisted with CDBG funds.

In December 2020, the City began a pilot program with Project WeHope to administer their Dignity on Wheels Mobile Shower and Laundry program in the City. The City allocated \$21,372 in funding to the program and further demonstrated its commitment to providing the unhoused community with services by further allocating \$50,180 to extend its existing service contract for an additional year in September 2020. The City is currently exploring another contract extension to continue the program. To date, 411 amount of presumed LMI individuals have benefited from the activity.

The City contracted with the Santa Clara County Office of Supportive Housing to provide assessment services to the unhoused via the Homeless Engagement and Assessment Team (HEAT). The HEAT team, contracted through Abode Services, provides ongoing outreach and assessment services to the unhoused community in Milpitas. An initial allocation of \$200,000 was made by the Council in December 2020. An additional \$100,000 was recently allocated to extend the service contract for another year. To date, 106 presumed LMI individuals have benefited from the activity.

In coordination with the County Continuum of Care (CoC), the City is also exploring the use of Permanent Local Housing Allocation (PHLA) funds. Through the CoC, the City was allocated \$609,445 in PHLA funding. The city is currently working with the CoC to determine the eligible activities and where the City could best deploy these funds, but among the eligible activities is assisting persons who are experiencing or at-risk of homelessness.

Addressing the emergency shelter and transitional housing needs of homeless persons

The City continues to work closely with the County Continuum of Care and the Santa Clara County Office of Supportive Housing to address the emergency shelter and transitional housing needs of our homeless residents. In the next fiscal year, the City will report that they have formalized an outreach and assessment agreement with the County of Santa Clara to provide on-site case management, assessment, and referral to other services to help house our homeless population.

The City partners with LifeMoves to provide various services to our unhoused community. LifeMoves operates 26 facilities and service sites consisting of 12 interim shelters, a drop-in center, and several permanent supportive housing sites, as well as programs such as outreach to the unsheltered homeless population, safe parking programs, and homelessness prevention emergency assistance programs. In particular, the LifeMoves Villa Shelter (Villa) provides individuals with shelter beds and other services to all residents of Santa Clara County. The Villa has 15 family units and 9 beds available for single women for an average shelter capacity of 54 individuals per night. The Villa generally serves about 250 individuals each year, about half of whom are children. The purpose of the program is to provide interim housing and supportive service for homeless families and individuals to rapidly return to stable housing and achieve long-term self-sufficiency. A total of 21 Milpitas residents were served in Program Year 2021.

The City of Milpitas also contracts with Abode Services through the County of Santa Clara's Office of Supportive Housing to provide homeless outreach, engagement, and street-based case management services. The County's Homeless Engagement and Access Team conduct assessments of unhoused residents and connect clients with a countywide network of services including emergency shelter and transitional housing.

Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families and those who are: likely to become homeless after being discharged from publicly funded institutions and systems of care (such as health care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); and, receiving assistance from public or private agencies that address housing, health, social services, employment, education, or youth needs

Milpitas does not currently have an institutional discharge policy. The City collaborates with the Santa Clara County CoC, who recently updated their Quality Assurance Standards to include a homeless discharge coordination policy.

The County CoC endeavors to provide guidance and resources to those released from institutions. The discharge policy includes access to reentry resource centers where, for example, an VI-SPIDAT could be administered. The VI-SPIDAT measures the acuity level of an individual and is used to inform what type of support or housing needs are required. It also serves as the entry point for access to other resources or supportive services, such as residential or outpatient treatment, transitional housing, or emergency shelter access.

CDBG and City Local Funds

- Rent Relief Program: The Silicon Valley Independent Living Center has been administering the City's Rent Relief Program, which offers low- and moderate-income residents no more than 3 months of rental assistance to prevent eviction, avoid community displacement, and to remain housed.
- Child Advocates of Silicon Valley: Child Advocates connect court appointed special advocates (CASAs) to foster children. These volunteers must make a commitment to the children for a long-term, many for his or her entire life. The consistent support of the CASA is often the only adult who has steadily remained with the child, providing crucial mentorship.
- Seniors Adults Legal Assistance (SALA): SALA is committed to providing free-legal services to seniors. Legal services that SALA provides ranges from: public benefits, long-term care, alternatives to institutionalization, elder abuse, long-term care insurance, incapacity planning, probate, simple wills and housing – related to Landlord-Tenant issues. Often, many seniors do not know his or her housing rights or sign over the will of their house without knowing, and with fixed income, many are unable to provide legal help. SALA provides legal help free of charge for these low to extremely low-income seniors.

Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again

As noted above, the City contracted with the Santa Clara County Office of Supportive Housing to provide assessment services to the unhoused via the Homeless Engagement and Assessment Team (HEAT). The HEAT team, contracted through Abode Services, provides ongoing outreach and assessment services to the unhoused community in Milpitas. In Program Year 2021, a total of 106 outreach contacts were provided to unhoused individuals. The total number of unhoused enrolled into the SCC HEAT program is 98 and the number of VI-SPDAT assessments administered is 106.

The City of Milpitas also partners with WeHOPE's Dignity on Wheels program to provide free hot showers, laundry and case management services for the unhoused Milpitas community. In Program Year 2021, a total number of 50 sessions were conducted in which 411 individuals participated. A total of 829 showers and 346 loads of laundry were provided by the program.

In Program Year 2021, LifeMoves received \$100,000 to rehabilitate the Villa Shelter facility. LifeMoves operates 26 facilities and service sites consisting of 12 interim shelters, a drop-in center, and several permanent supportive housing sites, as well as programs such as outreach to the unsheltered homeless population, safe parking programs, and homelessness prevention emergency assistance programs. In total, the completed repairs and rehabilitation to the Villa

Shelter facility allowed LifeMoves to serve 21 Milpitas residents.

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CR-30 - Public Housing 91.220(h); 91.320(j)

Actions taken to address the needs of public housing

This is not applicable, there are no public housing developments in the City of Milpitas.

Actions taken to encourage public housing residents to become more involved in management and participate in homeownership

Not applicable.

Actions taken to provide assistance to troubled PHAs

Not applicable.

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CR-35 - Other Actions 91.220(j)-(k); 91.320(i)-(j)

Actions taken to remove or ameliorate the negative effects of public policies that serve as barriers to affordable housing such as land use controls, tax policies affecting land, zoning ordinances, building codes, fees and charges, growth limitations, and policies affecting the return on residential investment. 91.220 (j); 91.320 (i)

Resolution No. 8523

The City adopted Resolution No. 8523 on February 2, 2016, which recognizes homelessness as a crucial problem in the County and will help contribute to future affordable housing projects that will house homeless.

Affordable Housing Ordinance 297

In June 2018, the City Council passed Affordable Housing Ordinance 297 which requires all new residential development projects of 10 units or more designed and intended for permanent occupancy shall construct 15% of the total number of dwelling units within the development as affordable units.

Housing Opportunity Zone

The project will establish a new 'overlay district' within established critical priority areas of Milpitas and complete the associated California Environmental Quality Act (CEQA) analysis to accelerate housing production in the City. The Housing Opportunity Zone (HOZ) will provide objective standards and incentives to developers to encourage and support the development of by-right, affordable, and supportive housing projects, including housing for special-needs residents.

The project would streamline housing approvals and accelerate housing production by providing clarity and certainty to developers to stimulate development in priority areas. Incentives to developers may include reduced parking requirements, additional density bonuses beyond the State Density Bonus, increased allowable heights, streamlined permitting processes, and fee waivers.

Actions taken to address obstacles to meeting underserved needs. 91.220(k); 91.320(j)

As noted above, the City contracted with the Santa Clara County Office of Supportive Housing to provide assessment services to the unhoused via the Homeless Engagement and Assessment Team (HEAT). The HEAT team, contracted through Abode Services, provides ongoing outreach and assessment services to the unhoused community in Milpitas.

Actions taken to reduce lead-based paint hazards. 91.220(k); 91.320(j)

Historically, the County of Santa Clara has received funding from State's Department of Health Service and Federal Government for Center for Disease Control to implement a Childhood Lead

Poisoning Prevention Program. The funded programs include: community outreach screen, case management, and public education to inform low-to-moderate income and older communities. The project will then follow up with environmental testing, lead-based education, blood-lead testing for children, hazard reduction grants, and follow-up with monitoring and testing. Milpitas has adopted a Lead-Based Paint Management Plan which complies with HUD-Based Paint regulations and outlines the required states of abatement and remediation for rehabilitation projects. In addition, the City publicizes and identifies lead-based hazards and older residential projects through its Code Enforcement Division and Building Department. In addition, projects undergoing rehabilitation, especially under the City's Rehabilitation Loan Program, are supported through abatement and technical assistance on how to proceed with mitigating lead-based paint hazards.

Actions taken to reduce the number of poverty-level families. 91.220(k); 91.320(j)

The City of Milpitas prioritized the needs of microenterprises during the pandemic. Under the American Rescue Plan Act (ARPA), various small Milpitas businesses received financial assistance due to the economic hardship brought on by the COVID-19 pandemic. The total available funds to be awarded for the Small Business Assistance Grant Program was \$1,570,000. A total of 343 eligible small business applications were received by the City. On April 8th, 276 grants of \$5,000 (\$1,380,000) and 67 grants of \$1,700 (\$113,900) were awarded to various microenterprises in Milpitas. This means all the business applicants deemed eligible received funds including 46 daycare centers.

Actions taken to develop institutional structure. 91.220(k); 91.320(j)

The City is striving to improve intergovernmental and private sector cooperation to synergize efforts resources and develop new revenues for community service needs and the production of affordable housing. Continued collaborative efforts include:

Regular quarterly meetings between entitlement jurisdictions at the CDBG Coordinators meeting.

Meet with Regional Housing Working Group

Joint jurisdiction Request for Proposals and project review committees

Coordination on project management for projects funded by multiple jurisdictions

Community Development Roundtable monthly meetings with the real estate and development communities

Actions taken to enhance coordination between public and private housing and social service agencies. 91.220(k); 91.320(j)

The City benefits from a strong jurisdiction and region-wide network of housing and community development partners, such as the County and the CoC. To improve intergovernmental and private sector cooperation, the City will continue to participate with other local jurisdictions and developers in sharing information and resources.

Identify actions taken to overcome the effects of any impediments identified in the jurisdictions analysis of impediments to fair housing choice. 91.520(a)

The City continues to provide funding for Project Sentinel, who the City contracts for fair housing issues. Project Sentinel is a private, non-profit agency providing fair housing, tenant-landlord counseling, and dispute resolution services. Additional services include counseling, case intake, education, and outreach. Other services include HUD-certified mortgage default counseling and First-Time Homebuyer workshops are open to Milpitas residents.

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CR-40 - Monitoring 91.220 and 91.230

Describe the standards and procedures used to monitor activities carried out in furtherance of the plan and used to ensure long-term compliance with the requirements of the programs involved, including minority business outreach and the comprehensive planning requirements

At this time, the City of Milpitas does not have a documented monitoring process or procedure. The City's goal is to develop a monitoring plan with details on standards and procedures during the program fiscal year 2022–2023-time frame.

The City of Milpitas Housing Division maintains a high level of integrity with regard to monitoring our subgrantees. The City ensures all funded organizations comply and meet financing and programmatic requirements of HUD through our contract process. The detail and level of service that is to be performed by the subrecipients are outlined in the agreements. The terms and conditions in the agreement follow HUD regulations and are approved by our City Attorney.

As outlined in the agreements, each organization is required to submit quarterly reports of its progress in meeting the goals listed in the contract. In addition, the organization must submit invoices for reimbursements that document what services have been rendered. City staff takes the quarterly reports and reimbursement supporting documents and reviews items for any discrepancies. If any concerns or questions arise while reviewing the documents submitted by the organization, City staff will contact the organization and begin an internal investigation. The internal investigation will continue until the discrepancy is cleared.

Citizen Participation Plan 91.105(d); 91.115(d)

Describe the efforts to provide citizens with reasonable notice and an opportunity to comment on performance reports.

As described in the City's approved Citizen Participation Plan, the CAPER was made available in the Public Library, City's Website, City Hall, and per request via email to the public for public comment for 15 days. A public notice was published in the Milpitas Post and City website on September 2, 2022. Public notices were translated into Spanish, Vietnamese, and Simple Mandarin to further enhance communication with residents whose primary language is not English. Due to the ongoing COVID-19 pandemic, the public is encouraged to comment via email to staff.

CR-45 - CDBG 91.520(c)

Specify the nature of, and reasons for, any changes in the jurisdiction's program objectives and indications of how the jurisdiction would change its programs as a result of its experiences.

There are no changes in the objectives of the program.

Does this Jurisdiction have any open Brownfields Economic Development Initiative (BEDI) grants?

No

[BEDI grantees] Describe accomplishments and program outcomes during the last year.

DRAFT



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	6 th Cycle Draft Housing Element (2023-2031) (Ashwini Kantak, Assistant City Manager, 408-586-3053 and Alex Andrade, Economic Development Director, 408-586-3046)
Category:	Community Development
Meeting Date:	9/20/2022
	Recommendation: 1) Receive a presentation on the Draft Housing Element; 2) Receive public comments; and 3) Provide comments to be reflected in a revised Draft Housing Element to be submitted to the California Department of Housing and Community Development (HCD) for its review.

BACKGROUND:

City staff and the consultant team, Raimi & Associates, have completed the Draft [Housing Element](#) and it was posted for public review on August 30, 2022. The Draft Housing Element represents the sixth update of this document and covers the eight-year planning period from 2023 to 2031. It is one of eight State-mandated General Plan elements and is the only General Plan element subject to review and certification by a State agency – the California Department of Housing and Community Development (HCD). The purpose of the Draft Housing Element is to analyze the community's housing needs for current and future residents across various income categories; create, update, and guide housing policy in the City; and identify locations to accommodate the City's Regional Housing Needs Allocation (RHNA) goals.

The Housing Element update process began in December 2021 and has involved considerable community input during the preparation of the document. HCD requires the Draft Housing Element to be available for a 30-day public comment period, which will end on September 30, 2022. The document will be revised as needed to respond to public comments before it is submitted to HCD for review in early October. Additional opportunities for public input will be available before the Draft Housing Element is considered by the City Council for adoption, which is expected to occur in January 2023.

At this time, the Draft Housing Element is presented for City Council discussion only and no action will be considered until after the City receives comments back from HCD and staff and the consultant team have had an opportunity to further revise the document to respond to HCD's comments.

On June 7, 2022, the City Council held a Study Session to receive an update of the Housing Element process. Staff and the consultant team presented the outcome of the initial phase of community engagement and findings from the background analyses to the City Council. The presentation included an overview of the housing needs assessment, constraints analysis, sites inventory methodology, fair housing assessment, and an environmental justice analysis. The City Council provided input on issues to address in the Draft Housing Element which has helped shape the organization of the document and the goals, policies, and programs.

ANALYSIS:

City staff and the consultant team will provide a presentation that covers: 1) comprehensive community engagement activities including the most recent City Council Housing Subcommittee and Planning

Commission meetings; 2) the proposed Draft Housing Element's goals, policies, and programs; and 3) an overview of the required Affirmatively Furthering Fair Housing (AFFH) assessment.

City Council Housing Subcommittee:

Staff and the consultant team received initial comments on the Draft Housing Element goals, policies, and program and the RHNA sites inventory at a City Council Housing Subcommittee meeting on August 22, 2022. The Subcommittee, led by Councilmembers Phan and Chua, expressed concerns about supportive housing placement and emphasized the importance of coordinating with the City's Police and Fire Departments and the community. Additional emphasis was placed on the importance of strengthening the City's relationships with county and federal agencies to acquire funding for low-income housing developments. The Subcommittee noted the Council's support for legal aid and financial assistance and cautioned staff on the challenges that come with policy changes that could impact the rental housing market. Staff was requested to set specific goals and requirements for rezoning that could accommodate further state funding opportunities as well as emphasizing the importance of rezoning and balancing the residential, commercial, and industrial needs of Milpitas.

The Subcommittee conveyed interest in continuing to explore additional options for middle income housing, increasing ADU development, Prohousing Designation Program through Housing and Community Development (HCD), establishing parking maximums to promote transit-oriented housing, and promoting housing types that reduce costs (e.g., cost sharing opportunities through the reduction of transportation related infrastructure costs). Further, staff was requested to research items including low-interest loan opportunities, surplus land program, land donation options, Enhanced Infrastructure Financing Districts (EIFD), adaptive re-use, the potential to create the City's own Housing Trust, and prefabricated homes. The Draft Housing Element programs and actions have been revised as needed to address the Subcommittee's comments. Attachment A itemizes these comments and the associated revisions.

Planning Commission:

On August 31, 2022, the Planning Commission was also presented a briefing on the Draft Housing Element. The meeting provided a timely opportunity to present the Commission with an overview of the community engagement process and the input received to date, the scope of the goals, policies, and programs, and the current RHNA Sites Inventory. Staff responded to questions on how the Housing Element will be implemented and how it will guide future decisions and actions to address the City's existing and future housing needs. A representative from Housing Choices, a non-profit organization that advocates and provides supportive services for persons with developmental disabilities, spoke at the meeting to highlight the special housing needs of this population group. A letter was also submitted to staff with recommendations to address these needs. Staff has reached out to the speaker to discuss how the recommendations from Housing Choices can be reflected in the next version of the Draft Housing Element that will be submitted to HCD for review.

Community Engagement:

Community engagement for the Housing Element was conducted in three phases: Phase 1 helped to identify key housing needs, challenges, and opportunities; Phase 2 focused on generating housing ideas; and Phase 3 corresponds with the release of the Housing Element.

Phase 1 community engagement activities included:

- Stakeholder and focus group meetings on housing needs and challenges – February-March 2022
- Community Workshop #1 – March 14, 2022
- Community Development Roundtable meeting – March 17, 2022
- "Pop-up" event at the City's Earth Day event – April 23, 2022
- Community Survey #1 – March 9 – April 14, 2022 (62 respondents)

Phase 2 of community engagement was conducted following the City Council Study Session on June 7, 2022, and consisted of the following activities:

- Community Development Roundtable meeting – June 16, 2022
- Community Workshop #2 – June 28, 2022
- “Pop-up” events:
 - Great Mall – June 25, 2022
 - Milpitas Main Library – July 30, 2022
- Stakeholder interviews on environmental justice and fair housing issues
- Community Survey #2 – June 24-July 31, 2022 (194 respondents)

Phase 3 of community engagement is occurring during the current 30-day public review period. The following community engagement tools and events are available now or scheduled to receive public comments:

- Online Community Survey #3 – August 31 to September 30, 2022 ([link](#))
- Online Tool for Commenting on Draft Housing Element ([link](#))
- Community Workshop #3 – September 13, 2022
- Community Development Roundtable – September 16, 2022
- Great Mall Farmers’ Market Pop-Up Event – September 18, 2022
- City Council Meeting – September 20, 2022
- Santa Clara Collaborative Equity Advisory Group – September 29, 2022

The City also accommodated community engagement challenges presented by the ongoing COVID-19 pandemic. The City used digital communication channels, in-person events, and interpretation and translation support to ensure the greatest level of participation from all segments of the community. The City offered interpretation in Spanish, Vietnamese, and Mandarin during virtual workshops. And, also provided bilingual flyers and surveys during Phase 1, sharing the survey door-to-door with 171 individual units at Sunnyhills apartments.

Draft Housing Element Goals, Policies, and Programs:

The Draft Housing Element is organized around ten (10) broad housing goals that are supported by 72 specific policies. These goals and policies are further articulated through 24 actionable programs. The combined goals, policies, and programs will shape the housing work program and priorities for the City during the next eight years. The end product reflects community input received to date, findings from the background reports, and items to comply with state housing element law. Below are goals from the Draft Housing Element:

- **GOAL HE-1: ADEQUATE SITES AND HOUSING PRODUCTION**
Maintain adequate sites to accommodate the City’s share of the regional housing needs, including sites that are appropriate for the development of housing affordable to extremely low, very low-, low- moderate-, and above moderate-income households through appropriate land use and zoning.
- **GOAL HE-2: EXISTING HOUSING RESOURCES**
Maintain high-quality residential and mixed-use neighborhoods and preserve existing housing resources, including units affordable to extremely low-, very low-, low-, and moderate-income households and market rate units.
- **GOAL HE-3: BARRIERS TO NEW HOUSING PRODUCTION**
Continually assess the barriers to new housing production and proactively mitigate the governmental constraints to new housing development.
- **GOAL HE-4: HOUSING DIVERSITY AND AFFORDABILITY**
Support the development of a diverse range of housing types, including rental and ownership units, housing affordable to all economic segments of the community, and housing for individuals with special housing needs.

- **GOAL HE-5: FAIR HOUSING**

Ensure equal housing opportunity for all households and equal access to housing resources.

- **GOAL HE-6: CONSERVATION AND SUSTAINABILITY**

Ensure a sustainable future for the City by promoting energy efficiency, reduction of greenhouse gases, and conservation in existing homes and new residential development projects through location-efficient development, green building, and utility efficiency and conservation programs.

- **GOAL HE-7: SPECIAL NEEDS POPULATIONS**

Support programs aimed at housing for special needs populations.

- **GOAL HE-8: UNHOUSED POPULATION**

Collaborate with regional agencies and organizations to support the unhoused population in Milpitas through the provision of services and supportive housing.

- **GOAL HE-9: MOBILITY**

Prioritize expanding affordable mobility options for lower income households and people with special needs.

- **GOAL HE-10: IMPLEMENTATION CAPACITY**

Allocate adequate City resources to implement programs in the Housing Element.

Fair Housing Assessment

For the 6th Housing Element Cycle, jurisdictions are required under State law (AB 686, adopted 2017) to incorporate a Fair Housing Assessment (FHA) into their Housing Element. The City's FHA is Appendix F-2 of the Draft Housing Element. The purpose of the FHA is to provide a basis, grounded in data and community engagement, to define programs and actions that address four core fair housing issues: 1) segregation; 2) racially and ethnically concentrated areas of poverty (R/ECAPs); 3) disproportionate housing needs (including those associated with displacement); and 4) disparities in access to housing opportunities.

Affirmatively Furthering Fair Housing (AFFH) seeks to combat housing discrimination, eliminate racial bias, undo historic patterns of segregation, and lift barriers that restrict access to foster inclusive communities and achieve racial equity, fair housing choices, and opportunities for all residents. For the purposes of analyzing the City's RHNA strategy through an AFFH lens, the Housing Element sites inventory is assessed at the tract level by neighborhood groupings. In general, the highest concentration of Housing Element sites are located in the southwestern portion of the city. These areas include a mix of high and moderate resource census tracts and do not have higher concentrations of population based on race/ethnicity and income than the city as a whole. Elsewhere in the City, parcels included in the sites inventory are more scattered, such as in Sunnyhills and North Abbott Ave. There do not appear to be significant differences in the location of parcels included in the Housing Element sites inventory based on whether they are Pipeline sites, Rezone sites, or Opportunity sites. The next section of this report provides more information on the Sites Inventory.

HCD also requires the RHNA Sites Inventory to consider strategies under AFFH. This includes ensuring that future housing units, especially for lower income households, are not disproportionately concentrated in areas with larger populations of racial/ethnic minority groups, persons with disabilities, and other members of groups protected from discrimination by the federal Fair Housing Act and the California Fair Employment and Housing Act. The City's AFFH analysis, Appendix F of the Draft Housing Element, identifies potential barriers that could restrict access to opportunity and, conversely, identifies specific meaningful programs and actions to affirmatively further fair housing. Appendix F provides a summary of fair housing issues, an analysis of segregation patterns and disparities in access to opportunities, and an assessment of contributing factors.

AFFH goals, policies, and implementation programs are integrated into the Draft Housing Element. Goals and supporting policies that particularly address AFFH are:

- Goal HE-4: Housing Diversity and Affordability;

- Goal HE-5: Fair Housing;
- Goal HE-7: Special Needs Population; and
- Goal HE-9: Mobility.

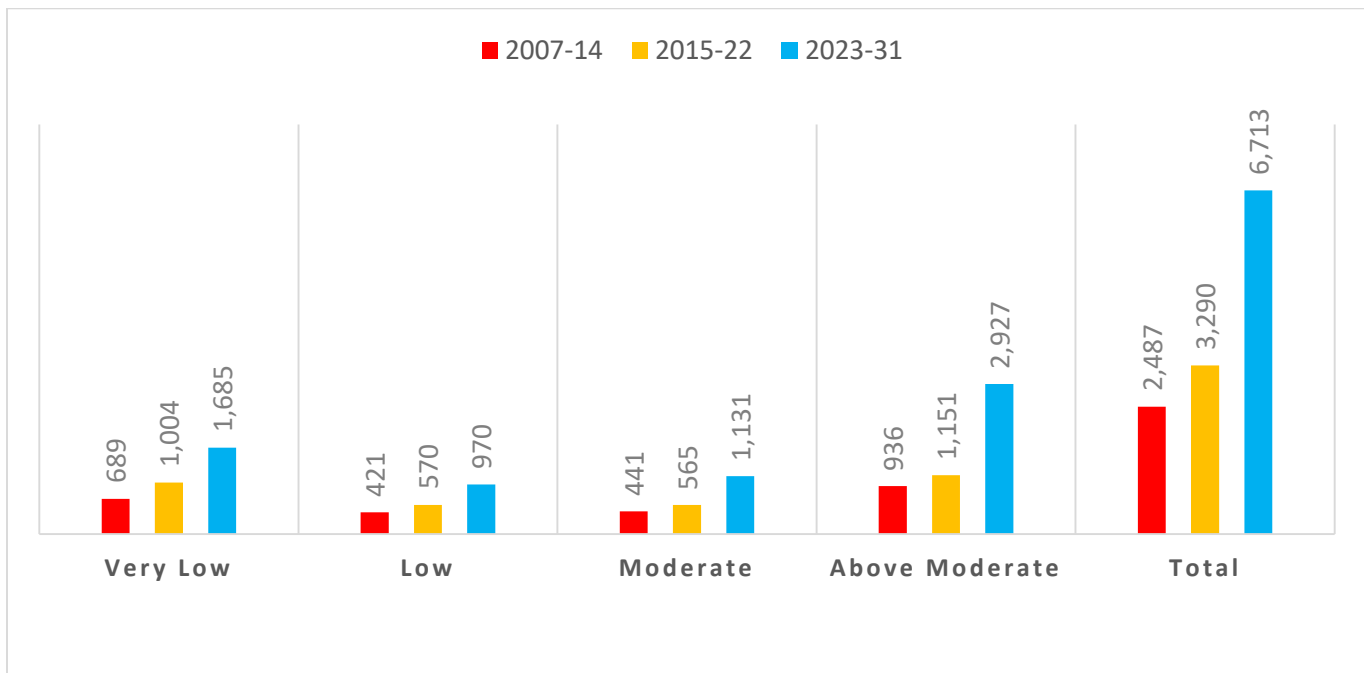
Implementation programs that address fair housing and anti-displacement include:

- Program 7: Tenant Assistance and Fair Housing Services;
- Program 8: Fair Housing Enforcement, Outreach, and Education;
- Program 9: Anti-Displacement;
- Program 10: Place-based Strategies for Neighborhood Improvements;
- Program 11: Preservation of At-Risk Housing;
- Program 14: Rent Review Ordinance; and
- Program 22: Supportive Housing for Persons with Disabilities.

RHNA Sites Inventory:

A key component of Goal HE-1, Adequate Sites and Housing Production, is identifying sites for planned or potential housing production to meet the RHNA goals. The City must demonstrate an adequate number of sites with appropriate existing zoning or foreseeable rezoning to accommodate at least 6,713 housing units, plus additional sites and units to provide a “buffer” for lower income units. The RHNA is further differentiated by household income levels (Very Low, Low, Moderate, and Above Moderate). Figure 1 below compares the RHNA for the 6th cycle with the previous 4th and 5th cycles. The 6th cycle RHNA has increased over two-fold from the current 5th cycle.

Figure 1: City of Milpitas RHNA Numbers (4th, 5th, 6th Cycles)



The City's sites inventory includes three categories of housing units: 1) Credits towards RHNA (which includes future Accessory Dwelling Units (ADUs) and Pipeline Projects), 2) Opportunity Sites; and 3) Rezone Sites.

Future ADUs and Pipeline Projects count as “credits” towards RHNA. Pipeline Projects include projects that have been approved, applications submitted, or those that are under construction.

- ADUs: Between 2019-2021, Milpitas permitted 31 ADUs per year on average (23, 29, and 42 respectively). Per HCD guidance, the City can count a total of 248 over the eight-year cycle (31 units * 8 years).

8 years) and spread across the income categories outlined above. During this period, the City has seen an uptick in both ADU applications submitted and permitted.

- Pipeline Projects: The City's current list of pipeline projects count towards 2,193 units with 123 in the very low-income category, 200 in the low-income category, 95 in the moderate-income category, and 1,775 in the above-moderate income category.

With the anticipated ADUs and Pipeline Projects, the City can accommodate 2,441 units. The City must accommodate the remaining RHNA of 4,272 units with Opportunity Sites or Rezone Sites. Opportunity Sites include vacant or underutilized sites, currently zoned for residential or mixed-use, and likely to redevelop during this eight-year planning period. Rezone Sites are potential candidates for redevelopment but would require to be rezoned to allow residential use ('NCMU' General Plan designation or 'C2' Commercial zone).

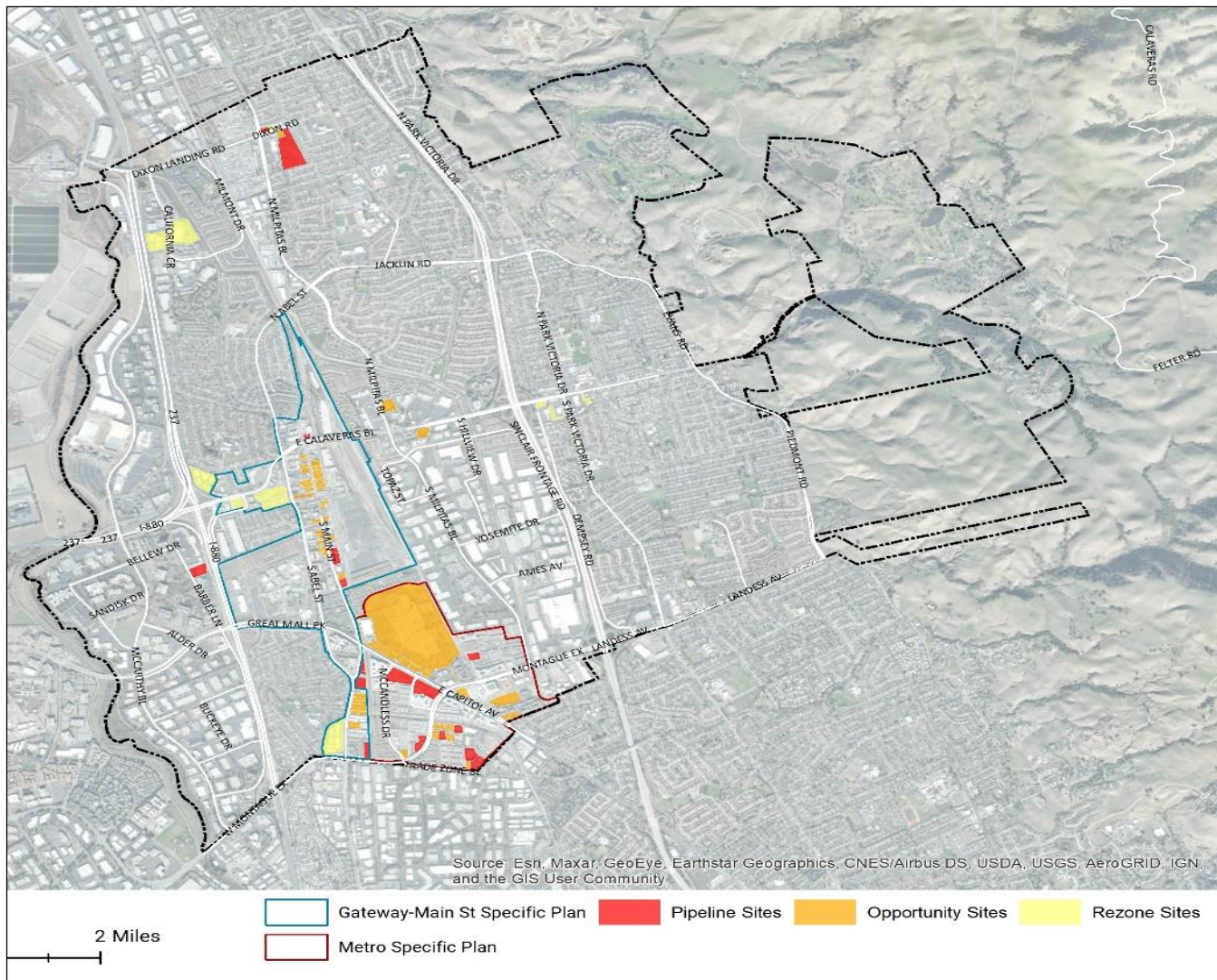
- Opportunity Sites: The City can accommodate 5,785 units with 1,091 very low-income units, 1,091 low-income units, 1,576 moderate-income units, and 2,027 above-moderate income units.
- Rezone Sites: The City can accommodate 1,274 units with 225 very low-income units, 225 low-income units, 319 moderate-income units, and 478 above-moderate income units.

Combined, the City estimates up to 7,032 units in these two categories, creating a total buffer of 2,760 units (65%) and lower-income buffer of 449 units (21%) over the remaining RHNA. Figure 2 provides a summary table of the Sites Inventory.

Figure 2: Sites Inventory Summary Table

	Very Low <50% AMI	Low 50-80% AMI	Moderate 80-120% AMI	Above Mod >120% AMI	Total
RHNA	1,685	970	1,131	2,927	6,713
Credits	197	274	169	1,800	2,441
Potential ADUs	74	74	74	25	248
Pipeline Projects	123	200	95	1,775	2,193
Remaining RHNA	1,488	696	962	1,127	4,272
Opportunity Sites	1,091	1,091	1,576	2,027	5,785
Rezone Sites	225	225	319	478	1,247
Total Capacity (Opportunity + Rezone)	1,316	1,316	1,895	2,505	7,032
Surplus (%)	449 (21%)		993 (97%)	1,378 (122%)	2,760 (65%)

Figure 3 is a Site Inventory Map showing the sizes and locations of sites identified as a proposed housing site, including Pipeline Projects (red), Opportunity Sites (orange), and Rezone Sites (yellow). Specific locations for potential ADUs are not shown on the map but are generally considered to be distributed citywide.

Figure 3: Sites Inventory Map**Next Steps**

Following the conclusion of the 30-day public comment period on September 30, 2022, staff and the consultant team will review all comments and update the draft Housing Element as needed. Depending on the number of revisions required, the goal is to submit the updated document to HCD for its review by early October 2022. HCD requires jurisdictions to allow up to 90 days to review Draft Housing Elements. Following receipt of HCD's comments, the document will be further revised to respond to HCD comments. It is expected that the "final" Draft Housing Element will be presented in January 2023 to the Planning Commission for a recommendation and to the City Council for possible approval before resubmittal to HCD for certification.

FISCAL IMPACT:

The Draft Housing Element review by the City Council does not have a fiscal impact. City staff will concentrate on completing the Draft Housing Element within existing resources and executed contract with the consultant.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

This report represents ongoing work on the Milpitas General Plan Housing Element 6th Cycle Update. The presentation and discussion are not a project under the California Environmental Quality Act (CEQA). The Draft Housing Element will be evaluated for consistency with the Final Environmental Impact Report (FEIR) completed for the Milpitas General Plan Update (SCH#: 2020070348). This CEQA evaluation will be completed prior to City Council adoption of the Housing Element.

RECOMMENDATION:

- 1) Receive a presentation on the Draft Housing Element;
- 2) Receive public comments; and
- 3) Provide comments to be reflected in a revised Draft Housing Element to be submitted to the California Department of Housing and Community Development (HCD) for its review.

Attachment:

A. City Council Subcommittee Comments and Housing Element Revisions, August 22, 2022

ATTACHMENT A
City Council Housing Subcommittee Meeting
August 22, 2022

DRAFT HOUSING ELEMENT UPDATE
Councilmember Comments and Staff Responses

Councilmember Comment	Staff Response
GOAL HE-8 and PROGRAM 22: Supportive Housing for Persons with Disabilities	
• Work with Santa Clara County to identify sites, and also using the HOZ. Location of supportive housing sites is a sensitive issue before releasing to the public because the public gets an impression of the location of the sites. • Recognize unintended consequences like public safety; mitigate through community outreach; coordinate with fire and police.	• HE Update: Added text in bold under Program 22: Supportive Housing for persons with Disabilities: "Analyze suitability of sites identified in the Sites Inventory for permanent supportive housing development and conduct community engagement about those sites." • HE Program 15: Housing Opportunity Zones already includes "Encouragement of special needs housing, including senior living, housing for persons with disabilities, and workforce housing "
PROGRAM 1: Adequate Sites for RHNA	
• Set specific goals for rezone sites: 150% of what's calculated RHNA. Balance commercial and residential for tax revenue	• HE Program 1: Adequate Sites for RHNA already includes "By December 2024, rezone properties as outlined in Appendix E to provide adequate sites to accommodate the RHNA shortfall. The rezoned sites will meet the requirements of Government Code 65583.2, including but not limited to a minimum density of 20 units per acre (as the low end of the density range for each zoning district), minimum site size to permit at least 16 units on site, and zoned to allow ownership and rental housing by right in which at least 20 percent of the units are affordable to lower income households." • HE Policy 1.9: Adequate Sites and Housing Production already includes "Support introducing housing and mixed-use development in older commercial centers (located in C-2, TC, and HS zoning districts) while balancing the importance of preserving convenient neighborhood and community-serving retail uses."
PROGRAM 4: Accessory Dwelling Units (ADUs)	
• ADU average is low- revisit incentives to have more ADUs per year over the next 8 years. • Explore subsidies for ADUs through ARPA funding? • Also have pre-approved plans for ADUs • Offer prefab options for constructing ADUs	• HE Program 4: ADUs already includes action- "By the end of 2024, pre-approve building permit plans of prototype ADU units and evaluate prefab ADUs to simplify and streamline the permitting process for homeowners."

PROGRAM 9: Anti-Displacement

- Expand on what specific measures are included. CC will be supportive of programs that provide resources like legal aid or monitor resources. However, if we have specific policies that might impact the rental market like rent stabilization. there might be some contention, so tread carefully
- HE Update: Reworded text under Program 9: Anti Displacement: "Supplement the California Tenant Protection Act of 2019 by evaluating and enacting certain anti-displacement measures by 2028. Example measures for exploration include:
- Targeting assistance to lower resource neighborhoods through Project Sentinel or similar service providers.
 - Increasing fair housing awareness and proactively monitor and enforce fair housing compliance.
 - Developing and adopting relocation assistance program.
 - Expanding tenant protections, such as anti-eviction measures.
 - Expanding Rent Relief and Mortgage Protection Program.
 - Supporting a tenant resource center, including expanding legal services and other assistance for lower-income households.
 - Implementing right to counsel in residential eviction proceedings.
 - Creating a rental inspection program for apartment buildings."

PROGRAM 11: Preservation of At-Risk Housing

- Sunnyhills: Keep them affordable for 5 years, but need more permanent options
- HE Update: For program 11: Preservation of At-Risk Housing, added action "By 2026, evaluate and identify more permanent funding options for the Sunnyhills apartments to ensure long-term housing stability and affordability."

PROGRAM 16: Affordable Housing Development

- Subsidy- Explore opportunities with the Housing Trust.
 - Provide low interest loans to affordable housing projects.
 - Explore surplus Land programs- land donation options
 - Partner with the County not just for supportive housing but also for additional funding sources
- HE Policy HE 1.7 Adequate Sites includes reference to land donation and land trusts. Add text: "Where feasible, explore the options for land swaps, land transfers, land banking, or other proactive solutions to create housing sites."
- HE Program 20: Specific Plans already includes "Annually pursue funding available at the local, state, and federal levels, such as Measure A funding."
- HE Update: Program 16: Affordable Housing Development: Added text "The City will also explore alternative models of homeownership and affordability, such as community land trusts, shared equity programs, and collective ownership models."

PROGRAM 20: Specific Plans

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| <ul style="list-style-type: none"> Land Use: Establish parking maximums Look at options for fee waivers or reductions for variety of housing types. Reduce transportation related infrastructure costs will help developers. | <ul style="list-style-type: none"> HE Policy HE 1.8 Adequate Sites already includes “Regularly review the land use designations and zoning districts to encourage a variety of housing types to be developed at a range of densities to equitably serve varying household types.” HE Program 20: Specific Plans already includes “Establish minimum zoning densities and maximum parking standards. Address shared parking and unbundled parking.” HE Update: Program 20: Specific Plans added action “Explore fee deferrals or waivers for 100% affordable housing projects in the Specific Plan areas” |
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PROGRAM 21: Zoning Code Updates

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| <ul style="list-style-type: none"> Tiny Homes- California has strict regulation and treat it like a regular home. Zoning Code doesn’t currently include tiny homes. City Council has directed to start a feasibility study. Also look at prefab homes (especially for ADUs); ODS looks into this; remove barriers. | <ul style="list-style-type: none"> HE Update: Added Policy HE 8.6 under Goal HE 8: Unhoused Population: Conduct a feasibility study to establish a low barrier navigation center (e.g., as a “tiny home village”) to provide temporary housing and case management services for the unhoused population. HE Update: Program 21: Zoning Code Amendments added action “Tiny Homes. Update the zoning or building code to accommodate tiny homes based on City Council directed feasibility study. Study to be completed by 2023.” |
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PROGRAM 23: Large Units for Families

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| <ul style="list-style-type: none"> Good to see focus on housing for families- Missing middle housing resources. Explore additional options. | <p>HE Update: Added Program 24: “Missing Middle” Housing with amended language:</p> <ul style="list-style-type: none"> Through Program 21: Zoning Code Amendments, identify possible zoning ordinance changes to further promote a mix of dwelling unit types and sizes, particularly in high resource neighborhoods. Evaluate a reduced affordable housing fee and expedited development review for missing middle housing projects. Promote opportunities to create duplexes and urban lot splits with the City’s SB 9 Toolkit. Integrate SB 9 Toolkit-trainings in the ADU Monday program. Support City participation in state financing programs for middle-income workforce housing developments that meet the City’s adopted Goals and Performance Measures for these projects. |
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Miscellaneous Comments

Pursue additional State funding through Prohousing designation.	HE Policy 10.1 Implementation Capacity already includes “Implement the Housing Element and other programs to qualify the City for the Prohousing Program, administered by the California Department of Housing and Community Development (HCD), to receive preference in scoring for competitive housing, community development, and infrastructure programs.”
Expand toolbox to acquire affordable housing properties-	- HE Policy 1.7 Adequate Sites includes reference to land donation and land trusts. Add text: “Where feasible, explore the options for land swaps, land transfers, or land banking, or other proactive solutions to create housing sites.” - While not acquisition, HE includes programs or actions to increase affordable housing sites, such as: - Program 3: Lot Consolidation - “By the end of 2024, develop tools to facilitate and incentivize lot consolidation.” - Program 20: Specific Plans (Metro Specific Plan) “Collaborate with the Valley Transportation Authority (VTA) to develop affordable housing on available VTA sites.”
Explore Enhanced Infrastructure Financing Districts (EIFD) – topic of City Council interest for a few years.	HE Policy 10.5 Implementation Strategy: Policy to be added to “Explore creating an Enhanced Infrastructure Financing District (EIFD) to assist with producing new affordable housing, rehabilitating, and conserving existing affordable housing, and constructing supporting infrastructure and facilities.”
Facilitate adaptive reuse to expand Sites Inventory	HE Policy 3.7 Barriers to Housing Production already addresses adaptive reuse, but amend language as follows: “Support the adaptive reuse, renovation, or redevelopment of economically underutilized properties or buildings- for residential or mixed-use development.”



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Discussion of State Funding Plan for Bike Lanes Facilities Enhancement and Homelessness Prevention and Unhoused Services (Staff Contacts: Ashwini Kantak, Assistant City Manager, 408-586-3053, Walter C. Rossmann, Deputy City Manager, 408-586-3012)
Category:	Leadership and Support Services
Meeting Date:	9/20/2022
	Recommendation: Receive presentation and provide feedback on the approved \$2.5 Million in State Funding for Bike Lane Facilities Enhancement and Homelessness Prevention and Unhoused Services.

Background:

In March 2022, the City sent a letter (Attachment 1) to Assemblymember Alex Lee's office, requesting one-time funding for three projects: Cardoza softball fields (up to \$7 million), bike lanes facilities enhancement (\$1 million), and homelessness prevention and unhoused services (\$1.5 million). On June 27, Assemblymember Lee's office informed the City that they had secured \$2.5 million in one-time state funding for two of the three requests: bike lanes facilities enhancement and homeless prevention and unhoused services.

Staff is still awaiting additional information on when funds will be available, expenditure and encumbrance deadlines, and extent of flexibility with regards to programs and initiatives, within the broader funding areas. Additionally, since the funding request was made by the City, there have been some changes such as new direction from the City Council and additional funding available from other sources for programs similar to those in the State funding request.

Thus, this staff report provides background on the two programs approved to receive the one-time funding but does not make any recommendations for the use of the funds. Based on Council input received, the availability of other funding sources, and information from the State about the one-time funding, staff will bring back recommendations to the Council in the future.

Analysis:

Bike Lanes Facilities Enhancement

The City Council adopted the Trails, Pedestrian, and Bicycle Master Plan in May 2022. The Master Plan includes recommendations to expand and improve the safety of the City's bicycle facilities. The \$1 million one-time state funding could be used for projects to expedite construction of the following bicycle facility improvements identified in the Master Plan:

- Install bike signals, enhanced intersection bike pavement markings, and bike signage to improve bicyclist safety at high-traffic signalized intersections on bike routes to schools and employment centers. Examples of intersections include Milpitas Boulevard/Jacklin Road/Abel Street, Tasman Drive/McCarthy Boulevard, or Tasman Drive/Alder Drive. The estimated cost for these improvements is \$750,000.

- Stripe new and/or enhance bike pavement markings, such as green bike lanes and buffered bike lanes, and signage per the adopted Trail, Pedestrian, and Bicycle Master Plan. The estimated cost for these improvements is \$250,000.

Homelessness Prevention and Unhoused Services

The funding request under this area included supporting the continuation and expansion of the City's mobile shower and laundry services, twice a week, for a period of 3 years (\$300,000), establishing a Milpitas Resource Center as a 2-year pilot program (\$500,000) and providing rent relief to vulnerable Milpitas residents (\$700,000).

At the January 5, 2021, City Council meeting, Council approved the establishment of a new ad hoc Homelessness Task Force comprised of up to ten members. Its purpose was to expand resident participation in addressing homelessness issues within the City and provide solutions, feedback, and input that will contribute to improving the quality of life of the Milpitas community, neighborhoods, and residents. The Task Force held ten meetings from March 2021 through January 2022 and developed recommendations, which were presented to the City Council on February 1, 2022. The funding request to the State was based on these recommendations.

On March 1 and April 19, 2022, City Council further discussed the report and recommendations from the Homelessness Task Force. Although individual Councilmembers expressed interest in various approaches to assist the unhoused population, including expansion of mobile shower and laundry services, a day worker/resource center to assist individuals in finding work and gaining self-sufficiency, a navigation center to assist unhoused individuals with case management and wrap-around services, and a Tiny Home Village feasibility study, the Council majority only directed staff to move forward with a Tiny Homes Village feasibility study and did not direct staff to proceed with a day worker/resource center.

Based on the Homelessness Task Force's recommendations, feedback from the City Council, and additional funding from other sources, staff have summarized the impacts of the continuation and expansion of current programs.

Mobile Shower and Laundry Services: This service began in March 2021 as a 6-month pilot program funded through the California Board of State and Community Corrections (BSCC) grant in the amount of \$21,372. In September 2021, the City Council approved staff's recommendation to continue funding weekly services for an additional 12 months, utilizing available BSCC funding, in an amount not to exceed \$71,500. In September 2022, the City Council once again approved staff's recommendation to continue funding through January 15, 2023, utilizing \$15,000 in the City's Low- and Moderate-Income Housing Fund. In total, the amount of funding for mobile shower, laundry, and case management services is \$86,552. The cost per session is approximately \$820.

As of June 2022, WeHOPE has provided 65 sessions to the unhoused community with shower and laundry services provided to 143 unduplicated clients. In addition to shower and laundry, clients have benefited from services provided by WeHOPE including distributing hygiene kits, clothing, snack bags, case management and/or supportive services, and assessments with the County's Homeless Engagement and Access Team (HEAT).

Although the City's request for State funding envisioned an expansion of the Mobile Shower and Laundry service by adding an additional day of service per week, current data indicates that only about one third of the individuals using these services are affiliated with Milpitas while the remaining two thirds come from other cities. Staff will continue to track usage data and may bring back recommendations to use a portion of the funding requested for this service to fund other programs related to homelessness prevention and unhoused services.

Rent Relief: On October 15, 2019, City Council authorized the creation of a Pilot Rent Relief Program. The program was established to serve low- and moderate-income residents, families with dependent children, seniors, disabled individuals, victims of domestic violence, emancipated foster youth, and any resident

occupying a subsidized unit. When the COVID-19 pandemic began to impact the community in spring 2020, the City had already created the program and established processes, which provided much needed assistance to at-risk residents in Milpitas. To date, the Rent Relief Program has been funded through the Affordable Housing Fund, Community Development Block Grant, and the Santa Clara County Emergency Food and Shelter Program. A breakdown of the funding sources is provided below:

(A) Affordable Housing Fund: In October 2019, the City Council allocated \$100,000 for the Pilot Rent Relief Program. The Silicon Valley Independent Living Center (SVILC) was directly selected based on Council approval to administer the program on behalf of the City. On March 3, 2020, the City Council authorized the allocation of an additional \$100,000 in financial assistance to Milpitas residents and families that have emergency housing needs. With these funds, the City assisted in the prevention of 40 households and 140 Milpitas residents from potential eviction.

(B) Community Development Block Grants (CDBG): On June 23, 2020, the City Council removed “Pilot” from the name of the program and allocated \$341,400 of CDBG funding to the Rent Relief Program. In 2020, SVILC served 240 Milpitas residents through the Rent Relief Program. On June 15, 2021, the City Council allocated \$327,696 of CDBG funding to the Rent Relief Program. In 2021, SVILC served 280 Milpitas residents through the Rent Relief Program.

(C) Santa Clara County Emergency Food and Shelter Program (EFSP): Since 2020, the City has applied and received grant awards (\$70,000 from Phase 37, \$50,000 from Phase 38, and \$95,927 from Phase 39) for the Rent Relief Program from the Emergency Food and Shelter Program (EFSP). SVILC is the City’s fiscal administrator for these grant funds. To date, the City has been awarded a total of \$215,927 from the EFSP program.

(D) American Rescue Plan Act (ARPA): In 2021, the City Council authorized the creation of a Rent and Mortgage Relief Program funded with \$1,100,000 in ARPA funds. Per Council direction, the \$1,100,000 in assistance will be allocated with 75% of the funding distributed to those in need of rent relief and 25% to mortgage relief. Staff has concluded the request for proposal (RFP) process and has selected LiveStories as the administrator of the new program. Staff anticipates launching the new program in October 2022.

To date, the City has allocated \$964,096 in rent relief assistance. Furthermore, there may be additional funding available as noted later in this staff report, for this program. Thus, the State funding requested for this program area may also be considered for other programs and services.

Milpitas Day Worker/Resource Center: The City’s funding request to the State outlines a 2-year pilot program for a Milpitas Day Worker/Resource Center. A day worker/resource center is intended to connect day workers to short-term jobs from residents and businesses. It would also function as a community and support center for clients with training classes and employment services. No overnight accommodations would be provided. However, as noted above, the Council did not direct staff to move forward with this Task Force recommendation. If Council wished to reconsider moving forward with this program, staff would need to bring back recommendations for additional resources since existing staff is already committed to meeting all the federal and state mandates related to housing and implementing programs funded by various grants and City funds.

Other Programs Related to Homelessness Prevention and Unhoused Services:

Unhoused Services: In February 2021, the City of Milpitas contracted with the County of Santa Clara Office of Supportive Housing for the Homeless Engagement and Access Team (HEAT). The contract established an outreach program that identifies, assesses, and refers unhoused individuals in the City of Milpitas to appropriate housing programs and services. To date, the total contracted amount is \$300,000 for services through this fiscal year. Continuation of these services will require additional funding.

Tiny Homes Village Feasibility Study: In August 2022, the City of Milpitas selected a consultant to evaluate the feasibility and prepare a report on an interim Tiny Homes Village housing program for unhoused Milpitas

residents; cost of the study is estimated at about \$130,000. Any recommendations directed by the City Council for implementation will require additional funding.

Potential Program for Employee Housing: The high housing cost in Milpitas has made it difficult for local educators to live near where they work. As a result, some Milpitas teachers and staff are leaving the school district and area to live in more affordable communities. Recruiting new teachers and staff has also been difficult as they too find living in the area almost impossible to afford. The loss of educators has created a strain on the Milpitas Unified School District (MUSD). For this reason, the MUSD is urging parents to help house teachers and staff amid the affordable housing shortage in hopes of keeping teachers in the community. Council may direct staff to explore the creation of a program specifically designed to aid MUSD teachers. This program could also be expanded to other individuals working in Milpitas that are unable to afford housing in the city or within a reasonable distance.

In addition to the programs noted above, other counties and cities have been implementing programs such as incentivizing leasing to locals, subsidizing ADUs with deed restrictions, and collaborating on a regional level to build navigation centers, provide wrap around services, and provide emergency housing. Once State funding rules have been clarified staff will bring forward additional information for Council consideration of funding.

Additional Funding Sources:

As noted earlier, subsequent to the funding request submitted to the State, additional funding related to housing has become available. As affordable housing, homelessness prevention, and unhoused services all continue to be a high priority for the City, staff wants to ensure that funding from various sources is maximized to help the Milpitas community.

Regional Early Impact Planning Grant Program (REAP): In July 2022, the Association of Bay Area Governments (ABAG) announced a suballocation award of one-hundred forty-two thousand seven-hundred eighteen dollars (\$142,718) of REAP funding to the City of Milpitas. The Department of Housing and Community Development's REAP Grant Program was created to accelerate housing production and facilitate compliance in implementing the sixth cycle of the regional housing needs assessment. The funds were requested to procure a consultant to create an Assessment of Fair Housing in preparing for the Housing Element and to partially fund Raimi and Associates as the consultant for the Housing Element.

Permanent Local Housing Allocation (PLHA): In October 2022, the City of Milpitas will be applying for the PLHA funding. PLHA funding is flexible and can be used for affordable housing development and to assist persons experiencing or who are at risk of homelessness. The City of Milpitas entitlement for 2019 and 2020 is \$609,445. The estimated five-year funding (2019-2023) for the City of Milpitas is \$1,431,570.

Next Steps

Based on Council input and clarity regarding the parameters of the State funding, staff will bring forward programmatic proposals and/or appropriation actions during the next few months.

Fiscal Impact:

There is no fiscal impact associated with accepting this report. Once Council provides direction on what program to fund with these monies, Finance will appropriate the monies during the FY 2022-23 mid-year council report.

California Environmental Quality Act:

The presentation and City Council feedback have no potential for causing a significant effect on the environment and are exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) at this point. Further, the recommendations are also exempt under CEQA Guideline 15301 if the City Council decides to continue Dignity on Wheels mobile shower and laundry services as the proposed services by WeHOPE would likely be placed in an existing City facility, and/or CEQA

Guideline 15311 as an accessory structure to an existing City facility. Each Guideline referenced above shall serve as an independent basis to determine the activity is exempt from CEQA.

Recommendation:

Receive presentation and provide feedback on the approved \$2.5 Million in State Funding for Bike Lane Facilities Enhancement and Homelessness Prevention and Unhoused Services.

Attachment:

1. One-Time State Funding Request Letter



CITY OF MILPITAS

OFFICE OF MAYOR RICH TRAN

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
 PHONE: 408-586-3059, www.ci.milpitas.ca.gov

March 28, 2022

Honorable Assemblymember Alex Lee
 1313 North Milpitas Boulevard
 Suite #255
 Milpitas, CA 95035

via E-mail:
Anurag.Pal@asm.ca.gov

RE: City of Milpitas' One-Time State Funding Requests

Honorable Assemblymember Lee,

Per our conversation, and on behalf of the City of Milpitas, I am requesting your support of one-time funding as part of the FY 2022-23 State budget for the following three projects.

Cardoza Park Softball Fields Improvement

The Milpitas North Valley Police Athletic League Softball League, formerly known as Milpitas North Valley Bobby Sox, has offered inclusive softball activities for 400 Milpitas youth annually for 24 years focusing on giving young girls in our community the confidence and leadership skills to succeed in life, while also being active and healthy using the fundamentals of athletics. For most of the program's life, it was held at the Russell Middle School Bobby Sox fields, owned by the Milpitas Unified School District (MUSD). In 2021, MUSD started to renovate the Russell Middle School fields for multi-use play with a track, soccer field, and small softball field. To support the continuation of softball league activities, the City temporarily transitioned the PAL Softball Program to Dixon Landing Park Sports fields. Aside from the youth players and their families, thousands of interleague players and spectators stretching from San Lorenzo to the Central Valley, visit Milpitas for team play, scrimmages, and tournaments.

In December 2021, the City Council approved the City's Parks Master Plan, which provides for four softball fields to ensure a permanent home for Milpitas softball activities. As part of the FY 2023-2027 Capital Improvement Program, the City Council will allocate \$500,000 to fund the design of the project. The cost for construction is estimated at \$7 million. The City requests support for all or a portion of the estimated construction cost.

Bike Lane Facilities Enhancement

The City Council is scheduled to approve the City of Milpitas Climate Action Plan in June 2022. In 2019, approximately 60% of Green House Gas emissions were related to on-road vehicle traffic. To encourage greater mode shift from motorized vehicle travel, the city desires improving existing bicycle facilities to promote multi-modal nature of roadways and increase bicyclist comfort. The City maintains stripping for approximately 26 miles of bike lanes (Class II bike lanes); however, the vast majority of these lanes do not have the green-colored pavement

identifying potential areas of conflict, which are typically close to intersections, or other protective measures.

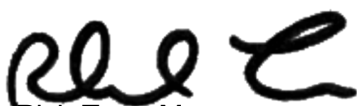
In order to support safer bicycle traffic, the City requests funding in the amount of \$1,000,000. This allocation would support upgrading existing bike lane infrastructure with green-colored pavement at intersections and through conflict areas, establish green-colored intersection bike boxes, buffered bike lanes, and/or separated bikeways marked with bollards, posts, or on-street parking.

Homelessness Prevention and Unhoused Services

Affordable Housing policies and programs and services for the unhoused are a high priority for the City Council. On March 1, 2022, the City Council provided input on the recently completed Homelessness Task Force report and individual members of the Council expressed interest in several items such as a homelessness help center, safe parking areas, prevention programs, a day worker center, a feasibility study for a navigation center, a dumpster or trash cans and expansion of the City's mobile shower and laundry services. The City also contracts with Santa Clara County to provide outreach and assessment services to the unhoused population in Milpitas. Some of the services currently funded by the City draw upon various one-time funding sources. In order to continue to serve those at risk of homelessness and the unhoused population, the City requests funding in the amount of \$1,500,000. This allocation would support continuing and expanding the City's mobile shower and laundry services, twice a week, for a period of 3 years (\$300,000), establish a Milpitas Resource Center as a 2-year pilot program (\$500,000), and provide rent relief to vulnerable Milpitas residents (\$700,000).

On behalf of the City of Milpitas and its residents, I appreciate your consideration and support for the three funding requests. For questions regarding these requests, please contact Ashwini Kantak, Assistant City Manager, at akantak@ci.milpitas.ca.gov or 408-586-3053 or Walter C. Rossmann, Deputy City Manager, at wrossmann@ci.milpitas.ca.gov or 408-586-3012.

Sincerely,



Rich Tran, Mayor
City of Milpitas

C: Milpitas City Council
Steve McHarris, City Manager
Ashwini Kantak, Assistant City Manager
Walter C. Rossmann, Deputy City Manager