



REGULAR MEETING OF THE MILPITAS CITY COUNCIL

AGENDA

TUESDAY, NOVEMBER 15, 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_vUur-ru0RAKutjFF-7ys-g

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

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

MILPITAS CITY COUNCIL CODE OF CONDUCT

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

CALL MEETING TO ORDER by Mayor and ROLL CALL by City Clerk (7:00 PM)

PLEDGE OF ALLEGIANCE

INVOCATION (Mayor Tran)

PUBLIC FORUM (7:05 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 (7:10 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 (7:15 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 Calendar of Meetings for November and December 2022 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Recommendation: Receive City Council Calendar of Meetings for November and December 2022.

C2. Approve City Council City Council Regular Meeting Minutes of November 1, 2022 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Recommendation: Approve City Council Regular Meeting minutes of November 1, 2022.

C3. Receive the Preview List of Anticipated Items for the Next Regular City Council Meeting (Staff Contact: Suzanne Guzzetta, 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, 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. Approve City Council Meeting Schedule for 2023 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Recommendation: Approve the 2023 Milpitas City Council meeting schedule, with any changes requested at the City Council meeting.

C6. Consider the Recommendation 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 City Commissions.

C7. Reconfirm Findings and Determinations Under Resolution No. 9165 and Assembly Bill 361 for the Continuation of Virtual Meetings of the City Council and Legislative Bodies (Staff Contact: Michael Mutalipassi, City Attorney, 408-586-3040)

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

C8. Approve and Authorize the City Manager to Execute a Four-Year Agreement with CivicPlus for the CivicEngage Municipal Website Platform (Staff Contact: Daniel Nam, Information Technology Director, 408-586-2712)

Recommendation: Approve and authorize the City Manager to execute a four-year agreement with CivicPlus for the CivicEngage Government Website Platform for a total not to exceed contract amount of \$200,000.00, in final form to be approved by the City Attorney.

C9. Waive the Second Reading and Adopt Ordinance No. 38.848 Amending Sections of Chapter 10 (Zoning), Title XI of the Milpitas Municipal Code Relating to Definitions and Regulations for Personal and Commercial Service Land Uses (Staff Contact: Ned Thomas, Planning Director, 408-586-3273)

Recommendation: Move to waive the second reading and adopt Ordinance No. 38.848 amending sections of Chapter 10 (Zoning) of Title XI of the Milpitas Municipal Code relating to definitions and regulations for commercial service land uses

C10. Approve and Authorize the City Manager to Execute a Stormwater Management Facilities Operation and Maintenance Agreement between the City of Milpitas and Toll West Coast, LLC for the Parkside Project at 1980 and 1992 Tarob Court and 551 Lundy Place (Staff Contact: Steve Erickson, Engineering Director / City Engineer, 408-586-3301; and Roberto Alonzo, Principal Civil Engineer, 408-586-3316)

Recommendation: Approve and authorize the City Manager to execute a Stormwater Management Facilities Operation and Maintenance Agreement between the City of Milpitas and Toll West Coast, LLC for the Parkside Project at 1980 and 1992 Tarob Court and 551 Lundy Place.

C11. Approve and Authorize the City Manager to Execute the Improvement Agreement with Satpreet Singh Thind and Jaspreet Kaur Thind, for Completion of Offsite Public Improvements Located at 250 Piedmont Road Associated with Site Development Permit (SD19-0004) (Staff Contact: Roberto Alonzo, Principal Civil Engineer, 408-586-3316)

Recommendation: Approve and authorize the City Manager to execute the improvement agreement with Satpreet Singh Thind and Jaspreet Kaur Thind, for completion of offsite public improvements located at 250 Piedmont Road associated with Site Development Permit (SD19-0004).

C12. Award and Approve a 5-Year Professional Services Contract with Fireworks and Stage Effects America, LLC for the Annual 4th of July and Annual Lunar New Year's Fireworks Shows for a Not-to-Exceed Amount of \$140,510.00 (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409)

Recommendation: Award and authorize the City Manager to execute the five-year professional services agreement with Fireworks and Stage Effects America, LLC for Annual 4th of July and Annual Lunar New Year pyrotechnical services for the not-to-exceed amount of \$140,510.00.

C13. Review and Accept the 2022 Legislative Season Outcome Report (Staff Contact: Walter C. Rossmann, Deputy City Manager, 408-586-3012)

Recommendation: Review and accept the 2022 Legislative Season Outcome Report.

C14. Adopt a Resolution Appointing Roger Lee as Interim Public Works Director (Staff Contact: Jeannine Seher, Human Resources Director, 408-586-3086)

Recommendation: Adopt a resolution appointing Roger Lee as Interim Public Works Director in accordance with California Government Code Sections 7522.56 and 21221(h) and approve, and authorize the City Manager to execute, an employment agreement with Roger Lee.

C15. Adopt a Resolution Appointing Liz Brown as Interim Human Resources Director (Jeannine Seher, Human Resources Director, 408-586-3086)

Recommendation: Adopt a resolution appointing Liz Brown as Interim Human Resources Director in accordance with California Government Code Sections 7522.56 and 21221(h) and approve, and authorize the City Manager to execute, an employment agreement with Liz Brown.

C16. Appointment of City Council Ad Hoc Naming Subcommittee Members (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409)

Recommendation: Defer the appointment of two Members of the City Council to January 2023 to be heard with appointments of Members of the City Council to commissions, boards, and subcommittees for the next legislative period.

C17. FY 2022-23 1st Quarter Financial Status Report for the Quarter Ended September 30, 2022 (Staff Contact: Lauren Lai, Finance Director, 408-586-3111)

Recommendation: Review the FY 2022-23 Quarterly Financial Status Report for the quarter ended September 30, 2022.

PUBLIC HEARINGS (7:20 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.

18. Conduct a Public Hearing and Introduce an Ordinance Amending the Zoning Map of the City of Milpitas in Accordance with the Provisions of Section 3.03 of Chapter 10 of Title XI (Zoning) of the Milpitas Municipal Code to Change the Zoning Classification of Certain Parcels (APNs 086-38-021, -022, and -037), Located on the East Side of South Hillview Drive and Extending Approximately 1200 Feet Southerly From Los Coches Street, From the M2 Heavy Industrial

Zoning District to the M1 Light Industrial Zoning District (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 the Zoning map of the City of Milpitas in accordance with the provisions of Section 3.03 of Chapter 10 of Title XI (Zoning Ordinance) of the Milpitas Municipal Code to change the Zoning Classification of Certain Parcels (APNs 086-38-021, -022, and -037), located on the east side of South Hillview Drive and extending approximately 1200 feet southerly from Los Coches Street, from the M2 Heavy Industrial Zoning District to the M1 Light Industrial Zoning District. In addition, determine that the zoning ordinance amendment is exempt from environmental review under the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Sections 15183 (Projects Consistent with a General Plan and Zoning) and 15061(b)(3) (Common Sense Exemption).

19. Conduct a Public Hearing and Introduce an Ordinance Amending Section 13 “Special Uses” of Chapter 10 “Zoning” of Title XI of the Milpitas Municipal Code Relating to Outdoor Dining (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 the title of the Ordinance; and (3) Move to waive the first reading beyond the title and introduce an Ordinance adding Subsection 13.19 “Outdoor Dining” to Chapter 10 “Zoning” of Title XI of the Milpitas Municipal Code Relating to Outdoor Dining Areas and determine the Zoning Ordinance Text Amendment is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15183 (Projects Consistent with a General Plan) and 15061(b)(3) (Common Sense Exemption).

20. Conduct a Public Hearing and Adopt a Resolution Certifying Election Results and Adding the Property Located at 1724 Sunnyhills Drive – Parcel 2 into Community Facilities District No. 2005-1 (Annexation No. 22) (Staff Contact: Steve Erickson, Engineering Director / City Engineer, 408-586-3301; and Roberto Alonzo, Principal Civil Engineer, 408-586-3316)

Recommendation: Conduct a public hearing and, following receipt of election results from the City Clerk, adopt a resolution certifying election Results and adding the property located at 1724 Sunnyhills Drive – Parcel 2 into Community Facilities District No. 2005-1 (Annexation No. 22).

COMMUNITY DEVELOPMENT (8:05 PM)

21. Receive a Report on the Homekey Project at 1000 Hillview Court (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3056)

Recommendation: Receive a report on the Homekey Project at 1000 Hillview Court.

LEADERSHIP AND SUPPORT SERVICES (8:50 PM)

22. Approve the Prioritization of Additional Workplan Items City Council Policy (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053; Walter C. Rossmann, Deputy City Manager, 408-586-3012)

Recommendation: Approve the Prioritization of Additional Workplan Items City Council Policy.

ADJOURNMENT (9:30 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.

October 2022						
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Milpitas City Council Calendar

November 2022

December						
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Item # C1.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1 6:00 PM -Closed Session 7:00 PM -City Council	2 2:00 PM -Santa Clara VTA Monthly Briefing - Northeast Group (CM) 7:00 PM -Community Advisory Commission (EC)	3 5:30 PM -Santa Clara VTA Board of Directors (CM) 5:30 PM -Milpitas Chamber of Commerce Board (EC)	4	5
6 2:00 PM In Person Native American Flag Raising Ceremony at Cesar Chavez Plaza	7 7:00 PM -Parks, Recreation & Cultural Resources Commission (CM)	8 4:00 PM -Milpitas HOPE Suicide Prevention Task Force	9 7:00 PM -Planning Commission 7:00 PM -Silicon Valley Clean Energy Board of Directors (EC) (Hybrid Meeting)	10 1:30 PM -SCC Emergency Operational Area Council Meeting (CM) 4:00 PM -Santa Clara VTA Policy Advisory Committee (AP) 4:00 PM -Treatment Plant Advisory Committee (CM) 6:00 PM -Youth Advisory Commission (EC) 6:00 PM -Cities Assoc of SCC Legislative Action Comm (CM) 7:00 PM -Cities Assoc of SCC Board of Directors Mtg (CM)	11  CITY HALL CLOSED IN OBSERVANCE OF VETERANS DAY Veterans Day Ceremony taking place at Veterans Plaza at 9am	12
13	14 4:30 PM -Economic Development and Trade Commission (KD)	15 7:00 PM -City Council	16 6:00 PM -Energy and Environmental Sustainability Commission (EC)	17 4:00 PM -Silicon Valley Regional Interoperability Authority (SVRIA) (KD) 6:30 PM -Bay Area Water Supply Conserv Agency (CM) (Teleconference) 7:00 PM -Public Safety and Emergency Preparedness Commission (KD)	18	19
20	21 7:00 PM -Library and Education Commission (EC) (Milpitas Public Library) 7:00 PM -Science, Technology & Innovation Commission (RT)	22	23	24  CITY HALL CLOSED FOR THANKSGIVING	25	26
27	28 7:00 PM -Arts Commission (RT)	29	30 2:00 PM -VTA North East City Group Briefing (CM)			

Finance Subcommittee will meet only as needed

November 2022						
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Milpitas City Council Calendar

December 2022

January 2023						
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Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1 5:30 PM -Milpitas Chamber of Commerce Board (EC) 4:00 PM -Santa Clara VTA Special Board of Directors (CM) 5:30 PM -Santa Clara VTA Board of Directors (CM) 7:00 PM -Tree Lighting Event	2	3
4	5 7:00 PM -Parks, Recreation & Cultural Resources Commission (CM)	6 7:00 PM -City Council	7 5:30 PM -Veterans Commission (RT) 7:00 PM -Community Advisory Commission (EC)	8 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)	9	10
11	12	13 4:00 PM -HOPE Task Force Meeting	14 4:30 PM -Transportation Subcommittee (RT/CM) 7:00 PM -Silicon Valley Clean Energy Board of Directors (EC) (Cupertino) 7:00 PM -Planning Commission	15 10:00 AM -VTA Congestion Mgmt Program Planning Comm (CM) 5:30 PM -Measure F Oversight Committee	16	17
18	19 7:00 PM -Science, Technology, and Innovation Commission (RT)	20 7:00 PM -City Council	21 6:00 PM -Energy and Environmental Sustainability Commission (EC)	22	23 CITY Observed Holiday 	24
25	26 CITY Observed Holiday 	27	28	29	30	31



JOINT MEETING OF THE MILPITAS CITY COUNCIL, HOUSING AUTHORITY, AND SUCCESSOR AGENCY

MINUTES

TUESDAY, NOVEMBER 1, 2022

CITY COUNCIL CHAMBERS, 455 E CALAVERAS BLVD, MILPITAS, CA

6:00 PM (CLOSED SESSION)

7:00 PM (PUBLIC BUSINESS)

The City Council of the City of Milpitas convened on the regular City Council meeting day of November 1, 2022, in the City Council Chamber at City Hall, 455 E. Calaveras Blvd., Milpitas, and via teleconference/Zoom webinar.

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

Mayor Tran called the Regular City Council meeting to order at 6:01 PM. Roll Call was taken by City Clerk Guzzetta.

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

ABSENT: None

City Attorney Mutalipassi announced the closed session items.

The City Council adjourned to Closed Session at 6:03 PM.

ADJOURN TO CLOSED SESSION

(a) **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**

Pursuant to Government Code Section 54956.9(d)(1)

City as Defendant

Steven Petrakovitz (Deceased) v. City of Milpitas, WCAB no. ADJ9926577

(b) **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**

Pursuant to Government Code Section 54956.9(d)(1)

City as Defendant

Alok Jain, et al. v. City of Milpitas, Santa Clara Superior Court Case no. 18CV325365

The City Council reconvened in regular session at 7:00 PM

CLOSED SESSION ANNOUNCEMENT

City Attorney Mutalipassi stated there was no reportable action.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Tran.

INVOCATION

Mayor Tran led the invocation.

PUBLIC FORUM

The following people spoke under Public Forum:

1. Allen Thomas
2. Steven Balsbaugh
3. Warren Wettenstein, Milpitas Chamber of Commerce President
4. Inderjit Mundra
5. Voltaire Montemayor

ANNOUNCEMENTS AND FUTURE AGENDA ITEMS

City Manager McHarris announced the Native American Flag Raising on Sunday, November 6, 2022 at 2 p.m. at Cesar Chavez Plaza, and the launch of the Catalytic Converter Theft Prevention Program.

Mayor Tran acknowledged the pickleball program in partnership with the City and commended the speed of the program's implementation. He also recognized the Catalytic Converter Theft Prevention program, Fire Station No. 2 and Alviso Adobe projects.

Councilmember Chua thanked members of the City Council for supporting her recommended pilot projects including pickleball and the Catalytic Converter Theft Prevention program, and thanked staff and the executive management team. She also acknowledged and thanked the Recreation Department for the success of the Saturday Senior Center pilot.

Councilmember Dominguez congratulated all stakeholders involved in the pickleball project. She commented on concerns with the democratic process and asked for inflammatory social media postings to stop.

Vice Mayor Montano announced her attendance at the ribbon cutting ceremony for Big Lots at McCarthy Ranch over the weekend, the ribbon cutting ceremony for Fire Station No. 2, and the grand opening of the Milpitas Alviso Adobe and encouraged the community to visit.

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 November 1, 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 moving Item 18 to the Consent Calendar.

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 November 2022 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Received City Council Calendar of Meetings for November 2022.

C2. Approve City Council City Council Regular Meeting Minutes of October 18, 2022 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Approved City Council Regular Meeting minutes of October 18, 2022.

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

Reviewed the list of items that have been requested by City Councilmembers and provided direction to staff as necessary.

C5. Accept Commissioner Resignation (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Accepted the resignation of Marshall Jones from the Economic Development and Trade Commission and direct the City Clerk to post the notice of unscheduled vacancy.

C6. Consider the Recommendation from Mayor Tran for Appointment to City Commissions (Contact: Mayor Tran, 408- 586-3029)

Received the recommendation from Mayor Tran and approved appointment to the Science, Technology & Innovation Commission.

C7. 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)

Reconfirmed findings and determinations under Resolution No. 9165 and Assembly Bill 361 for the continuation of virtual meetings of the City Council and Legislative Bodies.

C8. Approve and Authorize the City Manager to Execute a Professional Services Agreement with SCI Consulting Group for Storm Drain Fee Analysis Services for a Not-to-Exceed Amount of \$229,216.00 (Staff Contact: Roger Lee, Interim Public Works Director, 408-586-2602)

Received report on professional services proposals received and approve a professional services agreement with SCI Consulting Group; and authorized the City Manager to execute the agreement in the not to exceed amount of \$229,216.00.

- C9. Authorize the City Manager to Accept the 2022 Bulletproof Vest Partnership Grant in the Amount of \$11,078.17 and Approve a Related Budget Appropriation (Staff Contact: Jared Hernandez, Police Chief, 408-586-2406; and Frank Morales, Police Captain, 408-586-2521)**

Authorized the City Manager to accept the 2022 Bulletproof Vest Partnership Grant in the amount of \$11,078.17 and approve a related budget appropriation.

- C10. Receive a Report on Milpitas HOPE Suicide Prevention Task Force Activities Since September 2021 (Staff Contact: Renee Lorentzen, Director, Recreation and Community Services, 408-586-3409)**

Received the Report on Milpitas HOPE Suicide Prevention Task Force Activities Since September 2021.

- C11. Approve the Purchase of a Police Vehicle, Find the Procurement to be in the Best Interest of the City, and Authorize the City Manager to Execute Any Documents Necessary to Effectuate the Purchase at the Negotiated Amount (Staff Contact: Jared Hernandez, Police Chief, 408-586-2406; and Matthew Miller, Police Captain, 408-586-2522)**

Approved the purchase of a police vehicle, found the procurement to be in the best interest of the city, and authorized the City Manager to execute any documents necessary to effectuate the purchase at the negotiated amount.

- C12. Approve an Additional Budget Appropriation of \$17,151.00 to the Equipment Fund Non-Departmental FY 2022-23 Operating Budget for the Replacement Purchase of Two Police Vehicles through a Sourcewell Cooperative Contract with National Auto Fleet Group (Staff Contact: Jared Hernandez, Police Chief, 408-586-2406; and Matthew Miller, Police Captain, 408-586-2522)**

Approved an additional budget appropriation of \$17,151.00 to the Equipment Fund Non-Departmental FY 2022-23 Operating Budget for the replacement purchase of two police vehicles through a Sourcewell Cooperative Contract with National Auto Fleet Group.

- C13. Housing Authority/Successor Agency: Sale of the residential unit located at 254 Parc Place Drive (Staff Contact: Alex Andrade, Economic Development Director, 408-586-3046; and Michelle Silva, Administrative Analyst II, 408-586-3244)**

Adopted **Resolution No. HA31 / 9198 / SA14** authorizing the Executive Director of the Milpitas Housing Authority to execute documents for the sale of the residential property located at 254 Parc Place Drive in the amount of \$278,315.00; and approved related budget amendments due to the sale of the property located at 254 Parc Place Drive in the amount of \$278,315.00.

- C14. Approve and Authorize the City Manager to Execute Amendment No. 4 with AG Witt, LLC for Disaster and COVID19 Cost Recovery and Consultation Services to Extend the Term by 18 Months and Increase the Existing Contract by \$67,975.00 for a Total Contract Amount of \$229,211.25 (Staff Contact: Lauren Lai, Finance Director, 408-586-3111)**

Approved and authorized the City Manager to execute Amendment No. 4 with AG Witt, LLC for Disaster and COVID19 Cost Recovery and Consultation Services to extend the term by 18 months and increase the existing contract by \$67,975.00 for a total contract amount of \$229,211.25.

- 18. Approve Revisions to the Speed Hump City Council Policy (Staff Contact: Steve Erickson, Engineering Director / City Engineer, 408-586-3301; and Steve Chan, Transportation and Traffic Manager, 408-586-3324)**

Approved revisions to the Speed Hump City Council Policy.

PUBLIC HEARINGS

15. **Conduct a Public Hearing on a Site Development Permit for Development of a New 5,900-Square Foot, Two-Story Single-Family Residence, Two Detached Accessory Structures, an In-Ground Swimming Pool, and Associated Site Improvements; an Amendment to Planned Unit Development (PUD) No. 68 to modify the Previously Approved Design Standards for Single-Family Homes; and a Zoning Variance to Allow a Visible Intrusion into the Hillside Crestline Zone of Protection Sight Line, as Established by the City's Hillside Development Standards, on a Vacant +1.14-Acre Lot Located within the R1-H Single-Family Residential-Hillside Zoning District at 1339 Terra Vista Court (Countryside Estates, Lot 1) (APN: 029-07-010) (Staff Contact: Ned Thomas, Planning Director, 408-586-3273)**

Continued to Regular Meeting of January 17, 2023 at the request of the applicant.

16. **Adopt a Resolution Authorizing the Funding Application to the PLHA Program, Approving a Five-Year Plan for the PLHA Program Formula Allocation of an Estimated \$1,431,570.00 for the City of Milpitas, Authorizing the Receipt of the PLHA Grant, and Certifying to the California Department of Housing and Community Development Compliance with the PLHA Program Requirements (Staff Contact: Alex Andrade, Economic Development Director, 408-586-3046; and Sarah Balcha, Senior Administrative Analyst, 408-586-3268)**

Economic Development Director Andrade introduced the item and Senior Administrative Analyst Balcha presented the report.

Mayor Tran opened the public hearing

There were the following speakers:

1. Voltaire Montemayor
2. Jonathan Brunson
3. Barbara Navarro

Mayor Tran closed the public hearing.

Vice Mayor Montano asked to include in the lottery preferences to select eligible households in the restaurant industry such as dishwashers and servers. Economic Development Director Andrade indicated that those households are already included under restaurant employees and those in the hotel and travel industry. Vice Mayor Montano asked staff to include outreach to the small business community.

Councilmember Chua emphasized the importance of knowing how long the City has to utilize the grant and the amounts per year. She also suggested adding nurses' aides in senior daycare centers, security guards, EMTs, and pastors to the list of lottery preference categories. She asked for a way to create a "catch-all" for the positions the City hasn't directly identified so they aren't overlooked in the selection process. Economic Development Director Andrade responded that this is workforce housing so the positions discussed would be included. Assistant City Manager Kantak clarified that the program would be open to anyone that qualified based on the 30% AMI or below, these are the criteria to provide the weighting to receive assistance. She cautioned on broadening the categories too wide. Councilmember Chua reiterated the importance of the categories she discussed being included in the weighting process.

Councilmember Phan asked for a category to prioritize workforce housing for public safety

Mayor Tran made a motion to adopt **Resolution No. 9196** authorizing the funding application to the PLHA program, approving a five-year Plan for the PLHA program formula allocation of an estimated \$1,431,570 for the City of Milpitas, authorizing the receipt of the PLHA grant, and certifying to the California Department of Housing and Community Development compliance with the PLHA program requirements.

Vice Mayor Montano seconded the motion.

Mayor Tran amended the motion to add nurses' aides in senior daycare centers, security guards, EMTs, and pastors to the list of lottery preference categories, and add a category to prioritize workforce housing for public safety. Vice Mayor Montano accepted the amendment.

Motion/Second: Mayor Tran / Vice Mayor Montano

Motion carried by the following:

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

NOES: None

COMMUNITY DEVELOPMENT

17. Adopt a Resolution to Approve the Milpitas Residential and Mixed-Use Objective Design Standards (Staff Contact: Ned Thomas, Planning Director, 408-586-3273; and Jay Lee, AICP, Principal Planner, 408-586-3077)

Planning Director Thomas introduced the item and with Principal Planner Lee and Raimi and Associates Consultant Sensenig presented the report.

There were the following speakers:

1. Voltaire Montemayor
2. Barbara Navarro

Planning Director Thomas, Principal Planner Lee, and Raimi and Associates Consultant Sensenig responded to questions from council.

Motion: to adopt **Resolution No. 9197** to approve the Milpitas Residential and Mixed-Use Objective Design Standards

Motion/Second: Mayor Tran / Councilmember Chua

Motion carried by the following:

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

NOES: None

COMMUNITY SERVICES AND SUSTAINABLE INFRASTRUCTURE

18. Approve Revisions to the Speed Hump City Council Policy (Staff Contact: Steve Erickson, Engineering Director / City Engineer, 408-586-3301; and Steve Chan, Transportation and Traffic Manager, 408-586-3324)

* *Moved to Consent Calendar*

ADJOURNMENT

Mayor Tran adjourned the meeting at: 8:33 PM

Draft meeting minutes submitted by City Clerk, Suzanne Guzzetta

TENTATIVE CITY COUNCIL AGENDA ITEM LIST

Item # C3.

as of 11/8/2022

December 6, 2022 – 1st Tuesday

CLOSED SESSION

INVOCATION (assigned to Vice Mayor Montano)

PRESENTATION

CONSENT CALENDAR

1. Receive City Council calendar for December 2022 (City Clerk)
2. Approve City Council Meeting minutes of November 15, 2022 (City Clerk)
3. Preview list of items for December 20, 2022 (City Clerk)
4. Councilmember Request List (City Clerk)
5. Commission Appointments (City Clerk)
6. 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 (City Attorney)
7. Parks Playground Improvements Phase 3 award of contract (Public Works)
8. Audited Financial Statements (Finance)
9. Authorize the City Manager to Execute a Master Encroachment Agreement for Bandwidth IG, LLC, a Delaware Limited Liability Company for Installation of Network Facilities Within Public Right-of-Way (Engineering)
10. Sale of the residential unit located at 600 S. Abel Street Unit #208 (Housing)
11. ARPA Quarterly Update (CMO/Finance)
12. Appointment of Interim Fire Chief (Human Resources)

PUBLIC HEARING

13. 2nd Reading of 2022 Title 24 Building Code Ordinance Adoption (Building Safety)
14. 2nd Reading of All-Electric and EV Reach Codes for 2022 Green Building Code Ordinance Adoption (Building Safety)
15. 2nd Reading of 2022 Title 24 Fire Code Ordinance Adoption (Fire Prevention)
16. Introduction and 1st reading of Tobacco Retail Permit Ordinance (Planning)
17. ADU Zoning Emergency Ordinance (Planning)
18. Introduction and 1st Reading ADU Zoning Ordinance (Planning)

COMMUNITY DEVELOPMENT

COMMUNITY SERVICES

19. Receive Staff Report on Water Rates Study, Direct staff to proceed with community engagement proposed rates, including identifying a date for the public hearing and mailing a notice of the public hearing for the proposed water rates (Public Works)
20. Receive Staff Report on Sewer Rates Study, Direct staff to proceed with community engagement on proposed rates, including identifying a date for the public hearing and mailing a notice of the public hearing for the proposed sewer rates (Public Works)

PUBLIC SAFETY

LEADERSHIP

REPORTS

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

Item # C4.

OPEN ITEMS				
Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
1	Investigate labor policies related to Councilmember paternity/maternity leave, clarify if Councilmembers are employees and email to City Council prior to the next City Council meeting.	Dominguez	10/18/2022	Memo sent by City Attorney on 10/27
2	Review the City Council handbook to ensure that Councilmembers are guaranteed paternity/maternity leave and not made to give up their seat due to missing consecutive meetings.	Dominguez	10/18/2022	Memo sent by City Attorney on 10/27
3	Staff explore eliminating or waiving the fee for the gym at the Milpitas Senior Center	Chua	10/18/2022	Staff will evaluate this item consistent with the Recreation and Community Service Cost Recovery City Council Policy and bring it back to Council for consideration as part of approval of the FY 2023-24 Proposed Master Fee Schedule.
4	City Attorney or City Manager draft a written policy regarding foreign language spoken at the dais	Chua	9/20/2022	Item will be brought forward as part of the next City Council additional workplan items prioritization in December/January
5	City Manager to look into defining either a standalone teen center or updating information to indicate the Senior Center also functions as a Teen Center	Chua	9/20/2022	Item will be brought forward as part of the next City Council additional workplan items prioritization in December/January
6	Staff look into construction in the Sunnyhills area	Dominguez	9/20/2022	Staff is following up on this request and will send a status update to Council
7	Schedule an additional ADU workshop	Chua	9/6/2022	Staff is evaluating this request
8	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
9	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
10	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
11	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
12	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
13	Quarterly or Monthly crime statistics on Homekey Project	Chua	6/7/2022	PD will present quarterly reports starting on November 15, 2022.
14	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.

**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	Request for Crossing Guards at McCandless and Montague Expressway and review wages for Crossing Guards	Montano	4/5/2022	Staff is in the middle of a citywide traffic study, which includes school aged pedestrian counts around schools in the City including the McCandless and Montague Expressway intersection.
16	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:
17	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
18	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
19	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
20	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
21	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
22	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
23	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.
24	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.

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:
25	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;
26	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
27	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
28	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.
29	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
30	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.
31	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.
32	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
33	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.
34	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.
35	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.

**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:
36	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
37	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.
38	Review City policy on speed bumps	Tran	12/15/2020	City Council approved revisions to the Policy at the 11/01/2022 City Council meeting.
39	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.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve City Council Meeting Schedule for 2023 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	11/15/2022
	<u>Recommendation:</u> Approve the 2023 Milpitas City Council meeting schedule, with any changes requested at the City Council meeting.

Background:

Pursuant to Milpitas Municipal Code Section I-1-2.01, the City Council shall hold its regular meetings on the first and third Tuesday of each month. Typically, in November of each year staff presents a proposed meeting schedule, noting any conflicts that may exist with regularly scheduled meeting dates for the City Council's review and approval.

Discussion:

In the past the City Council has canceled both of the July regular City Council meetings for a summer recess. Also, due to celebration of National Night Out on the first Tuesday in August, the City Council approved in 2019 the cancellation of the first meeting date in August each year. Staff recommends that a Special meeting be scheduled for August 8, 2023, to conduct the business that would have otherwise been done on August 1.

Staff is proposing one date in January for a Council Retreat, and three dates in the months of January, February, and May 2023 for Council study sessions on the Preliminary Budget, Capital Improvement Plan (CIP), and Operating Budget. Moreover, staff is proposing additional Special Meeting dates in the months of February, September, October, and November as placeholders.

City staff has prepared the calendar for next year and requests that the Council confirm the City Council meeting schedule for 2023 for its regular bi-monthly Tuesday business meetings. The proposed 2023 schedule is included in the Council agenda packet.

Recommendation:

Approve the 2023 Milpitas City Council meeting schedule, with any changes requested at the City Council meeting.

Attachment:

2023 Council Meeting Dates List

City of Milpitas City Council

2023 Regular Meeting Dates

Tuesdays at 7:00 PM

and

2023 Special Meeting Dates

Tuesdays at 5:30 PM or TBD

January 10 and 17
January 26 Council Retreat
January 31 Preliminary 23-24 Budget Study Session
February 2
February 7 and 21
February 28 CIP Study Session
March 7 and 21
April 4 and 18
May 2 and 16
May 9 FY 2023-24 Budget Study Session
June 6 and 20
<i>July – none</i>
August 8 and 15
September 5 and 19
September 26
October 3 and 17
October 24
November 7 and 21
November 28
December 5 and 19

Note: Both July meetings and the first Tuesday in August (for National Night Out on August 2) are canceled. Tuesday, August 8 is scheduled for business that would otherwise be conducted on August 1. Special meeting dates are subject to change.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Consider the Recommendation from Mayor Tran for Appointment to City Commissions (Contact: Mayor Tran, 408-586-3029)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	11/15/2022
	<u>Recommendation:</u> Receive the recommendation from Mayor Tran and approve appointments to City Commissions.

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:

Public Safety and Emergency Preparedness Commission:

1. Promote Andrew Luu to Alternate #1 with an unexpired term ending June 2025.
2. Appoint Rosana Cacao as Alternate #2 with an expired term ending June 2023.

Arts Commission:

1. Reappoint Sandeep Umarani to a term ending October 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 City Commissions.

Attachments:

1. Applications for Public Safety and Emergency Preparedness Commission
2. Reappointment Request for Arts Commission

COMMISSION/COMMITTEE APPLYING FOR: Public Safety and Emergency Preparedness Commission

Name Rosana Cacao

Address Type Residence

Address [REDACTED]

City Milpitas

Postal/Zip Code 95035

Mobile Number [REDACTED]

E-Mail Address [REDACTED]

City Clerk's Office
JUL 21 2022
RECEIVED

Present Employer Retired

Occupation Retired

List community organizations to which you belong or have belonged (additional information may be attached).

Name of Organization Milpitas High Athletic Boosters

Member Held various executive positions

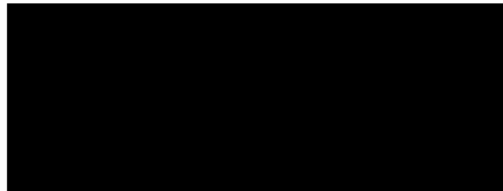
If application is for Veterans Commission, indicate branch and service in any U.S. military organization (retired or active duty).

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):

Past employee for city of Milpitas. Worked as a volunteer coordinator for 10 years managing volunteers. Was liaison to the Santa Clara County Emergency committee working with various cities in SCC, in emergency trainings and contributed to the SCC Volunteer Management Guide.

Date Jul 20, 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.



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

From: [Sandeep Umarani](#)
To: [Tegan McLane](#); [Suzanne Guzzetta](#)
Cc: [Rich Tran](#)
Subject: Re: Art commission Re-Application
Date: Wednesday, November 2, 2022 2:20:06 PM
Attachments: [Outlook-iaspdkfg.png](#)

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

Hi Suzanne,

I am writing this email to re-apply for the Milpitas art commission.

As a background, I have been a commissioner on art commission for past 3 years. I have thoroughly enjoyed working with the team and looking forward to contribute in the future.

Looking forward to hearing from you.

Regards,
Sandeep



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Reconfirm Findings and Determinations Under Resolution No. 9165 and Assembly Bill 361 for the Continuation of Virtual Meetings of the City Council and Legislative Bodies (Staff Contact: Michael Mutalipassi, City Attorney, 408-586-3040)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	11/15/2022
	<u>Recommendation:</u> Move to reconfirm findings and determinations under Resolution No. 9165 and Assembly Bill 361 for the continuation of virtual meetings of the City Council and Legislative Bodies.

Background:

On March 17, 2020, in the face of the COVID-19 pandemic, Governor Gavin Newsom issued Executive Order N-29-20 suspending certain provisions of the Ralph M. Brown Act in order to allow for local legislative bodies to conduct their meetings completely telephonically or by other electronic means.

The provisions in the Brown Act that were suspended by the Governor's Executive Order are contained at Government Code Section 54953(b)(3) and require that when teleconferencing is used, outside of a statewide emergency, that the following occur:

- An agenda is required to be posted at all locations, including any teleconference locations
- Each teleconference location must be identified on the actual agenda
- Each teleconference location shall be accessible to the public
- A quorum of the legislative body must be in the jurisdiction

With the Governor's Executive Order, the four above requirements were suspended, allowing Councilmembers to not have to post an agenda at their teleconference location, not have to identify their location on the meeting agenda, not have to ensure public accessibility at the teleconference location, and the legislative body did not need a quorum present in the jurisdiction. As the Council is well aware, this allowed all City Council meetings and other meetings of legislative bodies of the City to be conducted by Zoom with councilmembers, commission members, committee members, and staff all joining from remote virtual locations.

The suspension of certain provisions of the Brown Act was further extended by the Governor on June 11, 2021 by the issuance of Executive Order N-08-21 which continued to allow for complete virtual meetings until September 30, 2021.

With the expiration of the Governor's Executive Order and the uncertainty that surrounded the Governor's potential recall, the State Legislature also took the remote meeting issue into its own hands through the adoption of Assembly Bill 361, which is explained in more depth in the Analysis section below.

On May 17, 2022, the City Council adopted Resolution No. 9156, making findings that there is an existing State of Emergency and that state or local officials continue to recommend social distancing measures to prevent the spread of COVID-19. In particular, the resolution included reference to Cal-OSHA regulation 3205, which recommends physical distancing in the workplace. By motion and majority vote, the City Council may reconfirm the findings of Resolution No. 9156 and continue to hold virtual meetings pursuant to AB 361.

Analysis:

On September 16, 2021, the Governor signed AB 361, which allows legislative bodies to meet virtually provided there is a state of emergency declared by the Governor, and either (1) state or local officials have imposed or recommended measures to promote social distancing; or (2) the legislative body determines by majority vote that meeting in person would present imminent risks to the health and safety of attendees. The Governor by executive order signed on September 20, 2021, suspended the effective date of AB 361 to October 1, 2021. As a result, if the City desires to have virtual meetings on or after October 1, 2021, it must do so consistent with the requirements of AB 361.

AB 361 preserves many of the provisions of the earlier executive orders, including the suspension of the four teleconferencing requirements noted above, while also adding new requirements to the management of remote and teleconference public meetings in order to better achieve the levels of transparency that the Brown Act demands. Specifically, AB 361 imposes two new rules on remote public meetings:

1. Local governments and agencies hosting teleconference meetings in lieu of traditional in-person public meetings must permit direct public comment during the teleconference and must leave open the opportunity for public comment until the comment period for a given item is closed during the ordinary course of the meeting. The opportunity to make public comment must be of a sufficient duration so as to allow actual public participation.
2. Any action by the governing body during a public teleconference meeting must occur while the agency is actively and successfully broadcasting to members of the public through a call-in option or an internet-based service option. If a technical disruption within the agency's control prevents members of the public from either viewing the meeting of the public agency or prevents members of the public from offering public comment, the agency must cease all action on the meeting agenda until the disruption ends and the broadcast is restored. Action taken during an agency-caused disruption may be challenged as a violation of the Brown Act.

In order to continue to qualify for AB 361's waiver of in-person meeting requirements, the City Council must, within thirty (30) days of its first meeting under AB 361, and every thirty (30) days thereafter, make findings that (a) state or local officials continue to recommend measures to promote social distancing, or that (b) an in-person meeting would constitute an imminent risk to the safety of attendees.

The above conditions continue to exist at this time, and staff recommends that the City Council by motion reconfirm the findings made in Resolution No. 9156 so that the City Council and all other subordinate legislative bodies may continue to meet virtually.

Lastly, it is important to note that AB 361 is optional. If the City Council wishes, it may meet in person. In addition, hybrid meetings are permissible.

Policy Alternatives:

Alternative 1: Do not by motion reconfirm the findings made in the resolution making findings and determinations under Assembly Bill 361 for the continuation of virtual meetings.

Pros: None

Cons: Many of the existing Commission, Committee, and Task Force meetings will not be able to meet virtually or through a hybrid format forcing all staff, commission or committee members, and the public to attend meetings in person.

Reason not recommended: The COVID-19 pandemic continues to be a global health issue and by forcing commission, committee, and task force meetings to be in person, public health may be put at risk.

Fiscal Impact:

The City Council's reconfirmation of the findings made in the resolution to continue with virtual meetings will maintain the status quo and no financial impact is anticipated by the reconfirmation of the findings.

California Environmental Quality Act:

The City Council's reconfirmation of the findings made in the resolution is not a project under the California Environmental Quality Act (CEQA) Guideline 15378(b)(5) as it constitutes an organizational or administrative activity of the government that will not result in direct or indirect physical changes in the environment. Further, virtual meetings are likely to reduce certain impacts associated with vehicular travel related to in-person public meetings.

Recommendation:

Move to reconfirm findings and determinations under Resolution No. 9105 and Assembly Bill 361 for the continuation of virtual meetings of the City Council and Legislative Bodies.

Attachment

1. Resolution 9165

RESOLUTION 9165

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS MAKING FINDINGS AND DETERMINATIONS UNDER AB 361 FOR THE CONTINUATION OF VIRTUAL MEETINGS

WHEREAS, the Ralph M. Brown Act (Gov. Code § 54950 *et seq.*) generally requires local agencies meeting via teleconference, including through other virtual or electronic means, to, among other things, provide public access at each location in which members of the legislative body are teleconferencing; and

WHEREAS, the Legislature recently enacted Assembly Bill 361 (AB 361), which amended Government Code section 54953 to allow local agencies to meet fully virtually, without fully adhering to the rules otherwise applicable to teleconferencing, during a proclaimed state of emergency if state or local officials have imposed or recommended measures to promote social distancing; and

WHEREAS, the Governor issued a proclamation declaring a state of emergency on March 4, 2020 due to the COVID-19 pandemic, pursuant to section 8625 of the California Emergency Services Act, and this proclaimed state of emergency currently remains in effect; and

WHEREAS, the City Council of the City of Milpitas has considered the circumstances of the state of emergency; and

WHEREAS, state or local officials continue to recommend measures to promote social distancing to prevent the spread of COVID-19, in particular, Cal-OSHA regulation 3205 recommends physical distancing in the workplace generally and regulates a “close contact” defined as being within 6 feet of another under certain circumstances; and

WHEREAS, in order to continue to impose social distancing while holding in-person meetings there is a high likelihood that members of the public would not all be able to be present in the meetings spaces; and

WHEREAS, the continuation of virtual meetings will allow for full participation by members of the public until social distancing recommendations are no longer necessary; and

WHEREAS, the City Council of the City of Milpitas desires that all City legislative bodies continue to hold virtual meetings pursuant to AB 361 and Government Code section 54953(e).

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 and all other legislative bodies of the City of Milpitas who are required to hold public meetings, shall continue to meet virtually in accordance with Government Code section 54953(e) and without compliance with section 54953(b)(3) based upon the findings and determinations hereby made by the City Council.

PASSED AND ADOPTED this 7th day of June 2022, by the following vote:

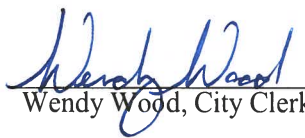
AYES: (5) Mayor Tran, Vice Mayor Montano, Councilmembers Chua, Dominguez, and Phan

NOES: (0) None

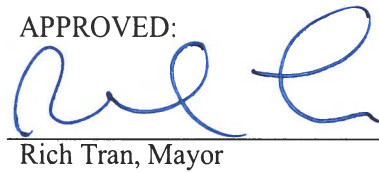
ABSENT: (0) None

ABSTAIN: (0) None

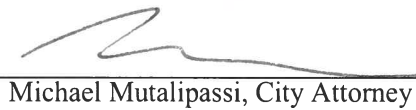
ATTEST:


Wendy Wood, City Clerk

APPROVED:


Rich Tran, Mayor

APPROVED AS TO FORM:


Michael Mutalipassi, City Attorney



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve and Authorize the City Manager to Execute a Four-Year Agreement with CivicPlus for the CivicEngage Municipal Website Platform (Staff Contact: Daniel Nam, Information Technology Director, 408-586-2712)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	11/15/2022
	<u>Recommendation:</u> Approve and authorize the City Manager to execute a four-year agreement with CivicPlus for the CivicEngage Government Website Platform for a total not to exceed contract amount of \$200,000.00, in final form to be approved by the City Attorney.

BACKGROUND:

The City's website serves as a critical communication channel for current and future Milpitas residents and businesses. In May 2001, under the City Council's direction, City launched its first website, hosted on site by the City's server network. Since its launch, the website went through several iterations to include more digital services and to keep the site content fresh and functional. In April 2016, Council approved the launch of the current website developed in collaboration between various City departments.

Since the last update, the performance of the existing website solution has been impacted due to the volume of content and increased programs and services offered through the site. Additionally, its outdated architecture and design also pose security challenges due to software vulnerabilities and a lack of adequate permission control. American Disabilities Act requires that public agency websites stay accessible to the public with disabilities. Although the current website meets the minimum guidelines, there are areas of improvement to improve accessibility.

In summary, the current website is outdated, cluttered, and does not accurately reflect the image and brand of the City. The technology available today combined with modernized design standards and website design principles would much better serve Milpitas residents, businesses, and other website visitors.

ANALYSIS:

Staff evaluated potential solutions with the primary objectives of improving resident and business engagement, communication, accessibility, security, and integration with other technology systems, while showcasing the City's brand for business attraction. The lessons from the challenges with the current website, as well as the feedback received from the public and employees were also taken into consideration, including improved search capability, easy-to-navigate menu layout, and implementation of a content management system to improve staff efficiency.

Based on the requirements, staff determined that the CivicEngage website platform from CivicPlus would best accomplish the City's objectives. CivicPlus has over 20-years of experience in government engagement solutions and municipal website industry serving over 11,000 local government clients across the country. CivicPlus is the City's current vendor for several public engagement and administration tools, including the MyMilpitas Citizen Reporting app, NextRequest Public Records Request management software, ArchiveSocial Social Media Archival Service and MuniCode Meetings and Codes, which provide better integration opportunities. CivicPlus also offers other products that can help streamline content management, comply with ADA regulations, and provide a comprehensive, integrated solution for the variety of services provided by the City. These include Agenda & Meeting Management, Public Safety Notifications, and Recreation Management solutions.

Per Section I-2-1.03 of the City's Municipal Code, installation and implementation of information technology projects is defined as a professional service and can be procured without a competitive solicitation (Section I

3.13). Thus, staff is recommending executing a contract with CivicPlus without a competitive procurement process.

Scope of Services

The scope of services includes project management, interviews with staff to determine desired functionality as well as solicitation of feedback from external users on a test site. Once the desired functionality is determined, CivicPlus will assist with the design of the site as well as data migration to the cloud. Before the launch, CivicPlus will provide 3-day on-site training to the staff to ensure efficient management of the content. The scope also includes a redesign of the website in the fourth year. This will enable the City to refresh the look of the website while taking advantage of the latest technology trends and tools. Launch of the new site is estimated to take 6-8 months from contract execution.

POLICY ALTERNATIVE(S):

Alternative 1: Do not approve entering into an agreement with CivicPlus for CivicEngage website platform.

Pros: The City will not incur \$200,000 in costs.

Cons: City will not have the ability to modernize the City's website that serves as its digital doorstep.

Reason for Not Recommending: City will lose the opportunity to improve citizen and business engagement, communication, accessibility, security, and provide accurate, modern and professional image of the City to the public. City will be exposed to security vulnerabilities from outdated architecture of the website platform.

FISCAL IMPACT:

The total contract amount, including the initial implementation and 4-year maintenance costs is to not exceed \$200,000. The funding required for the initial implementation is approximately \$99,000, which will be funded by the Capital Improvement Program, CIP 3427 "Technology Projects," that has a balance of \$354,630 as of October 28, 2022. Funding for CIP 3427 comes from the General Government CIP Fund and the Permit Automation Fund,

Subsequent 3-year annual maintenance cost of approximately \$33,000 per year will be covered by the Information Technology Department and appropriated by Council during the annual budget process.

California Environmental Quality Act (CEQA):

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

RECOMMENDATION:

Approve and authorize the City Manager to execute a four-year agreement with CivicPlus for the CivicEngage Government Website Platform for a total not to exceed contract amount of \$200,000, in final form to be approved by the City Attorney.

Attachment(s):



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Waive the Second Reading and Adopt Ordinance No. 38.848 Amending Sections of Chapter 10 (Zoning), Title XI of the Milpitas Municipal Code Relating to Definitions and Regulations for Personal and Commercial Service Land Uses (Staff Contact: Ned Thomas, Planning Director, 408-586-3273)
Category:	Consent Calendar-Community Development
Meeting Date:	11/15/2022
	<u>Recommendation:</u> Move to waive the second reading and adopt Ordinance No. 38.848 amending sections of Chapter 10 (Zoning) of Title XI of the Milpitas Municipal Code relating to definitions and regulations for commercial service land uses

Background:

This Ordinance was introduced at the City Council meeting held on October 18, 2022. The Ordinance is now ready for its second reading and adoption.

Fiscal Impact:

The proposed zoning ordinance amendments will create a new land use classification for personal services and amend the existing classifications for commercial services and business support services. With the new and revised land use classifications, the number of use permit applications for new businesses may vary, and the corresponding permit fees collected by the City would also vary. The difference in fees collected would depend on what type of future businesses are proposed and in what locations, which is unknown. The change in permit fee revenues associated with the proposed zoning amendments would likely be negligible.

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).

Recommendation:

Move to waive the second reading and adopt Ordinance No. 38.848 amending sections of Chapter 10 (Zoning) of Title XI of the Milpitas Municipal Code relating to definitions and regulations for personal and commercial service land uses.

Attachments:

1. Ordinance No. 38.848

PLEASE NOTE:

This copy of Ordinance No. 38.848 is a “redlined” version for your convenience. Text additions are designated by an underline and text deletions are designated with a strikethrough.

REGULAR

NUMBER: 38.848

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 RELATING TO DEFINITIONS AND REGULATIONS FOR PERSONAL AND COMMERCIAL SERVICES, AND MAKING FINDINGS OF CEQA EXEMPTION

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of October 18, 2022, upon motion by Mayor Rich Tran was adopted (second reading) by the City Council at its meeting of November 15, 2022, 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, 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 a specific definition for personal services, and the definitions for commercial services and business support services are overly broad; and

WHEREAS, the City wishes to enact appropriate regulations applying to commercial services of a personal nature, as opposed to those that provide services to a more professional or business nature, and to more clearly distinguish between different types of commercial services based on their operational characteristics and appropriate location under the zoning regulations; and

WHEREAS, the City has prepared a Zoning Amendment (“Amendment”) to the City’s Municipal Code, including Section 2.03 (“Definitions”), Section 4.02 (“Residential Use Table”), 5.02 (“Commercial Use Table”), 6.02 (“Mixed Use Use Table”), and 7.02 (“Industrial Use Table”), Section 4.03 (“Residential Zone Special Uses”), Section 6.02-1 (Mixed Use Zone Special Uses”), and Section 53.09 (“Off-Street Parking Standards”) of Chapter 10 (Zoning) of Title XI; and

WHEREAS, on September 14, 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 September 14, 2022, the Planning Commission for the City of Milpitas voted unanimously (7-0) to recommend that the City Council adopt the proposed Zoning Ordinance text amendment; and

WHEREAS, on October 18, 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, this ordinance is exempt from the California Environmental Quality Act, Public Resources Code Section 21000, *et seq.* (“CEQA”), each as a separate and independent basis, pursuant to CEQA Guidelines Section 15183 (projects consistent with the General Plan) and Section 15061(b)(3) (no possibility of significant environmental effect).

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

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

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Based on its review of the entire record, including the staff report, public comments and testimony presented to the Planning Commission and City Council, and the facts outlined below, the City Council hereby finds and determines that this ordinance is categorically exempt from the California Environmental Quality Act (“CEQA”) under CEQA Guidelines Section 15061(b)(3), also known as the “common sense exemption.” This ordinance would enact appropriate regulations relating to commercial services of a personal nature, such as hair and nail salons, as opposed to those that provide services to a more professional or business nature, such as accounts or copy shops. The new regulations are needed to more clearly distinguish between different types of commercial services based on their operational characteristics and locations. Given that the proposed changes are limited to clarifying definitions and updating use tables within the Zoning Ordinance, it can be seen with certainty that there is no possibility that this Ordinance would have a significant effect on the environment.

Moreover, the City Council hereby finds that the introduction and adoption of this Ordinance is categorically exempt from CEQA pursuant to CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning). Section 15183 of the CEQA Guidelines provides that projects that are consistent with a Community Plan, General Plan or Zoning for which an EIR has been certified “shall not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site.” The proposed zoning amendments serve to implement policies and guidelines in the Land Use Element of the Milpitas General Plan because they would clarify definitions and update use tables in the adopted Zoning Ordinance. Therefore, the proposed Amendment is consistent with the General Plan and exempt from CEQA pursuant to CEQA Guidelines Section 15183 of the CEQA Guidelines.

SECTION 3. GENERAL PLAN CONSISTENCY

The Land Use Element of the City’s General Plan includes policies and guidelines that require development projects to support a full spectrum of conveniently located residential, commercial, public, and quasi-public uses that support and enhance business development and regional transportation objectives. The Land Use Element also calls for reviewing and updating the Zoning Ordinance as appropriate to reflect Land Use goals, policies, and implementation action included in the General Plan. Moreover, the Land Use Element provided that the City shall monitor emerging trends in retail and other commercial uses... and update the Zoning Ordinance to help ensure that commercial centers remain competitive and successful. The proposed zoning amendments address each of these General Plan policies by making it easier to interpret and administer the use regulations and to authorize a variety of commercial and personal service uses in appropriate locations. The amendments have been drafted as part of a periodic review of the Zoning Ordinance to identify needed updates and address ambiguities and inconsistencies in the code.

SECTION 4. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 2

Item # C9.

Title XI, Chapter 10, Subsection 2.03 ("Definitions") of the Milpitas Municipal Code is hereby amended to read as follows:

XI-10-2.03 Definitions

"Abate" shall mean to repair, replace, remove, destroy or otherwise remedy the condition in violation of this Chapter.

"Accessory Building or Use" means a subordinate building or use, whose purpose is clearly incidental to that of the main building or the use of the land, and which shall not contain living or sleeping quarters or storage for commercial vehicles in excess of three-quarter ($\frac{3}{4}$) ton size. Accessory dwelling units, as defined in subsection XI-10-13.08 "Accessory Dwelling Units," are exempted from the prohibition against living and sleeping quarters. An accessory building shall be considered attached to the main building if:

1. It shares a common wall with the main building; or
2. It shares an integral roof structure having the same framing system and roof covering as the main building and is separated from the main structure by no more than ten (10) feet at any given point.

"Accessory Structure" means a structure subordinate to the principal use of a building on the same lot and serving a purpose customarily incidental to the use of the principal building. An accessory structure is that which an accessory building is not, by definition. Examples include, but are not limited to fences, trellises, covered patios, and porte cocheres.

"Adjacent" means having a common border with or being separated from such a common border by a right-of-way, alley or easement. Properties separated by a street, alley, intersection, or other public right-of-way (other than an elevated interstate freeway), shall be considered abutting when their property lines would touch in any way if drawn to the center line of such street, alleyway, intersection, or other public right-of-way.

"Airport" means any area of land or water designed, used, or intended to be used or set aside for the landing and taking off of aircraft. The term "Airport" includes all necessary taxiways, aircraft storage and tie-down area, hangars and other necessary buildings and open spaces.

"Alley" means any public thoroughfare which affords only a secondary means of access to abutting property.

"Alteration, Structural" means any change which would tend to prolong the life of the supporting members of a building or structure, such as bearing walls, columns, beams or girders.

"Amateur Radio Facility" means a wireless communication facility operated by an FCC licensed amateur radio operator within the Amateur Radio Service (USC Title 47, Part 97).

"Amateur Radio Operator" means a person holding written authorization to be the control operator of an Amateur Radio facility. This authorization may be in the form of a license or permit issued by the Federal Communications Commission or a foreign national or multi-national license or permit recognized by treaty as valid in the United States.

"Antenna" means any system of towers, poles, panels, rods, wires, drums, reflecting discs or similar devices used for the transmission or reception of electromagnetic waves. See also "Satellite dish or satellite antenna."

Apartment House. See "Dwelling, Multiple-Family."

Apartment, Efficiency. Efficiency apartment means a dwelling unit in a multi-family building consisting of not more than one (1) habitable room, together with kitchen or kitchenette and sanitary facilities.

"Assembly" means the provision of activities for assembled groups of participants at institutions or facilities including but not limited to private and nonprofit clubs; social or fraternal organizations; and churches, temples, synagogues and other places of worship. Assembly uses in the context of groups of people is distinct from and unrelated to the definition of the industrial use "Assembly from pre-processed materials."

"Assembly from pre-processed materials" means assembling, packaging, or distributing from previously prepared materials, such as cloth, plastic, paper, leather, precious or semi-precious metals or stones, electric or electronic instruments and devices such as television, radios, and pharmaceutical products. Assembly in the context of industrial manufacturing is distinct from and unrelated to the definition of "Assembly" involving groups of people.

"Auto" means any motor vehicle requiring a license pursuant to the California Vehicle Code.

"Automobile Service Station" means any premises used for supplying gasoline and oil at retail, direct to the customer, including minor accessories and services for automobiles, but not including automobile repairs.

"Automobile and Trailer Sales Area" means an open area, other than a street, used for the display, sale or rental of new or used automobiles or trailers, and where no repair work is done except minor incidental repair of automobiles or trailers to be displayed or sold on the premises.

"Automobile Wrecking" means the dismantling or wrecking of used motor vehicles or trailers, or the storage, sale or dumping of dismantled, partially dismantled, obsolete or wrecked vehicles or their parts.

"Bar or nightclub" means a commercial establishment serving alcoholic beverages for consumption on the premises where the service of food is only incidental to the consumption of such beverages. Dancing and live entertainment may also be conducted within the establishment.

"Basement" means a story, partly or wholly, underground. For purposes of height measurements, a basement shall be counted as a story where more than one-half (½) of its height is above the average level of the adjoining ground.

"Bay Window" means a window or set of windows jutting out from the wall of a building, rising from the ground and forming an alcove which may or may not add additional floor area or a sitting area within.

"Bedroom" means any room which meets the minimum requirements of both the Zoning Ordinance and the Building Code for a Habitable Room, which is constructed in such a manner that less than fifty (50) percent of one (1) wall is open to an adjacent room or hallway and which can be readily used for private sleeping purposes, shall be counted as a bedroom in order to determine parking or other requirements. For the purpose of calculating parking requirements, the following rooms which regularly make up a standard dwelling unit shall not be considered a "bedroom": one (1) kitchen, one (1) living room; one (1) family or

recreation room; one (1) dining room; and the customary sanitary facilities. Planning staff shall determine whether or not a room qualifies as one of the above exceptions.

"Billiard Center" means a place for the public to view and participate in cue sports, such as, but not limited to, billiards, pocket billiards (e.g., pool), snooker, and the various forms of carom billiards.

"Billiards" means a "Recreation and Entertainment facility" for the public to view and participate in cue sports, such as but not limited to billiards, pocket billiards (e.g., pool), snooker, and the various forms of carom billiards.

"Block" means that property so designated on an official map of the City, or part of the City, or bounded by streets, or by a street or streets, and railroad right-of-way, canal right-of-way, or unsubdivided acreage.

"Boarding House" means an establishment where lodging is provided for compensation, generally for stays of more than 30 days, for up to 8 persons. Boarding houses typically have individual rooms for guests, shared bathroom facilities and a single common kitchen. Meals may be served for guests and included as part of the cost of lodging.

"Breezeway" means a covered passageway between buildings which does not exceed ten (10) feet in width and which has at least one side open, except for necessary supporting columns.

"Building" means a structure having a roof supported by columns or walls for the housing or enclosure of persons, animals, or chattels. Where a dwelling is separated by a division wall without openings, each portion of such dwelling shall be deemed a separate building.

Building, Height of. "Height of building" means the vertical distance measured from the adjoining curb grade to the highest point of the roof surface, if a flat roof; and to the mean height level between eaves and ridge for a gable, hip or gambrel roof; provided, however, that where buildings are set back from the street line, then the height may be measured from the average elevation of the finished grade along the front of the building.

Building, Main. "Main building" means a building in which is conducted the principal use of the lot on which it is situated. The main building shall contain all area within the interior faces of the building, including enclosed areas that are attached. In any "M" district any dwelling shall be deemed to be the main building on the lot on which the same is situated.

Building, Unit Group. "Unit group building" means two (2) or more buildings (other than dwellings) grouped upon a lot and held under single ownership such as universities, hospitals, institutions and industrial plants.

Business, Retail. "Retail business" means retail sale of any article, substance, or commodity for profit or livelihood conducted within a building, but not including the sale of lumber or other building materials or the sale of used or second-hand goods or materials of any kind.

"Business Support Services" means establishments primarily within structures that provide other businesses with ancillary services that further or facilitate the other businesses' primary activity. This term does not include activities or uses that are specifically listed as a conditionally permitted or prohibited use in the applicable zone. Examples of business support services include but are not limited to:

1. Business equipment repair services (except vehicle repair);
2. Commercial art and design (production);

3. Computer-related services (rental, repair);
4. Copying and quick-printing services;
5. Equipment rental businesses within structures;
- ~~6. Film processing laboratories;~~
- ~~67.~~ Heavy equipment repair services where repair occurs on the client site;
- ~~78.~~ Janitorial services;
- ~~8. Mailbox rentals;~~
9. Mail advertising services (reproduction and shipping);
10. Other "heavy service" business services;
11. Outdoor advertising services;
- ~~12. Photo developing/finishing/printing;~~
- ~~1213.~~ Protective services (other than office related);
- ~~1314.~~ Rental, repairs and distribution of office or business equipment;
- ~~15. Soils and materials testing laboratories;~~
- ~~1416.~~ Window cleaning.

Business, Wholesale. "Wholesale business" means the wholesale handling of any article, substance or commodity for profit or livelihood, but not including the handling of lumber or other building material or the open storage or sale of material or commodity, and not including the processing or manufacture of any product or substance.

Camp, Trailer. "Trailer camp" means an area or tract of land used or designed to accommodate two (2) or more automobile or house trailers.

"Candidate" means any person, party, referendum, initiative or other ballot measure.

"Cemetery" means land used or intended to be used for the burial of the dead and dedicated for cemetery purposes, including columbarium, crematories, mausoleums, and mortuaries when operated in conjunction with and within the boundary of such cemetery.

"Child Care Center" means any child-care facility other than a family child care home, in which less than twenty-four (24) hour per day non-medical care and supervision are provided to children in a group setting. It includes infant centers, preschools, and extended child day care facilities, but does not include after school programs.

"Class A Office Space" means a high quality, modern building with large floor plates and amenities that typically attracts rents in the top twenty-five percent (25%) bracket.

"Commercial Athletic Facility" means a building or site equipped for physical training or athletic games and sports, such as but not limited to, health spas, tennis, gymnasiums, handball courts, racquetball courts; also including ancillary uses when incidental to the primary use, such as but not limited to, steam baths, weight training, aerobic classes, massage, saunas, and the retailing of athletic supplies to be used in the facility.

"Commercial Fueling Facility" means a fueling facility designed for commercial customers which dispenses gasoline, diesel, or similar vehicle fuels, and which is not open to the general public, has no cash sales and provides no personal services on-site, provided that said facility is located not closer than five hundred (500) feet from any residentially zoned district or any area designated on the General Plan as being "residential" or any mobile home park.

"Commercial Laboratory" means a facility for scientific research in technology-intensive fields. Examples include biotechnology, pharmaceuticals, genetics, plastics, polymers, films and fibers.

~~**"Commercial Service"** means establishments which provide non-medical services of a retail character to patrons which may involve the sale of goods associated with the service being provided. These establishments include businesses that provide both personal and business services, but not industrial services. Any assembly, processing or customization of products on the premises must be incidental and integral to the retail sale of the product. All such completed products must be sold on the premises and may not be distributed to another location for future retail sale or wholesale or for storage to be shipped to another location where the product is sold. This restriction shall not preclude the sale of completed products that are delivered or shipped to the retail customer. The total floor area devoted to assembly, processing, customization and packaging of products sold on the premises shall be less than half the area devoted to sales and display of the completed product.~~

~~Examples of establishments covered by this designation include:~~

- ~~1.—Accountants;~~
- ~~2.—Architects;~~
- ~~3.—Dry cleaners;~~
- ~~4.—Floral shops;~~
- ~~5.—Barber and beauty shops;~~
- ~~6.—Interior decorators;~~
- ~~7.—Laundromats (self-service laundries);~~
- ~~8.—Locksmiths;~~
- ~~9.—Mailbox rentals;~~
- ~~10.—Photocopy shops;~~
- ~~11.—Shoe repair shops;~~
- ~~12.—Tailors;~~

~~13. Tuxedo rental shops.~~

~~Examples of establishments not covered by this designation include any dry-cleaning plants, metal shops, machine shops, welding shops, and any customer fabrication or machinery repair shops.~~

"Condominium" means an estate in real property consisting of an undivided interest in common in a portion of a parcel of real property together with a separate interest in space in a residential, industrial, or commercial building on such real property, such as an apartment, office, or store. A condominium may include in addition a separate interest in other portions of such real property. Such estate may, with respect to the duration of its enjoyment, be either of the following:

1. An estate of inheritance or perpetual estate.
2. An estate of life.
3. An estate for years, such as leasehold or sub-leasehold.

"Condominium Conversion" means a change in the type of ownership of a parcel or parcels of land, together with the existing attached structures, to that defined for a condominium project or a community apartment project regardless of the present or prior use of such land and structures and whether substantial improvements have been made or are to be made to such structures.

"Conference Center" means a facility used for holding conventions, seminars, workshops or similar activities, including dining facilities and lounges for use by participants, as well as compatible accessory facilities such as offices and business centers.

"Continuing Violation" means a violation, infringement or breach of a provision of this chapter that is uninterrupted and lasts for a continuous period in excess of 24 hours.

"Court" means an open unoccupied space, other than a yard, on the same lot with a building or buildings, and bounded on two (2) or more sides by a building, or buildings, including the open space in a dwelling group providing access to the units thereof.

"Court Apartment" means one (1), two (2) or three (3) multiple dwellings arranged around two (2) or three (3) sides of a court which opens onto a street, or a place approved by the Commission.

"Curb Grade" means the elevation of the established curb in front of the building measured at the center of such front. Where no curb grade has been established, the City Engineer shall establish such curb grade or its equivalent for the purpose of this Chapter.

"District" means a portion of the City within which certain uses of land and buildings are permitted or prohibited and within which certain yards and other open spaces are required and certain height limits are established for buildings, all as set forth and specified in this Chapter.

"Drive Through Uses" means any component or part of a building or structure which attracts or invites persons in motor vehicles to drive their vehicles upon the premises, and which is used to conduct business or used for the purpose of selling merchandise from the inside of said building to the occupants of motor vehicles.

"Dry-Cleaning Plant" means an establishment providing onsite, high-volume laundry and garment cleaning services, typically with the use of volatile solvents, including dry cleaning and garment pressing.

diaper services, commercial laundries, and linen supply services. These facilities may include incident onsite customer pick-up services.

"Dwelling" means a building or portion thereof designed exclusively for residential occupancy, including single-family, two-family and multiple-family dwellings, but not including hotels.

Dwelling, Group. "Group dwelling" means one (1) or more dwellings, other than a tourist court, arranged around two (2) or three (3) sides of a court, which opens onto a street, or a place approved by the commission, including single-family, two-family or multiple-family dwellings and court apartments. Group dwelling include homeless shelters and transitional housing.

Dwelling, Multiple-Family. "Multiple-family dwelling" means a building or portion thereof, designed for occupancy by three (3) or more families living independently of each other.

Dwelling, Single-Family. "Single-family dwelling" means a detached building designed exclusively for occupancy by one (1) family for living purposes and having only one (1) kitchen.

Dwelling, Two-Family. "Two-family dwelling" means a building designed exclusively for occupancy by two (2) families living independently of each other.

"Dwelling Unit" means a habitable room or group of habitable rooms (e.g., living room, bedroom, den, library, recreation, studio, etc.) designed for occupancy by one (1) or more persons living as a family or single household unit with common interior access to all living, kitchen and bathroom areas. No dwelling unit may have more than one (1) kitchen.

"EcoPass" means a program offered by the Valley Transportation Agency (VTA) in which employers or property owners purchase annual EcoPass stickers that allow their employees, tenants or residents to ride all VTA bus and light rail vehicles at no cost. "Educational Institution" means a college or university giving general academic instruction equivalent to the standards prescribed by the State Board of Education.

"Electronic Smoking Device" means an electronic and/or battery-operated device, the use of which may resemble smoking that can be used to deliver an inhaled dose of nicotine or other substances. "Electronic Smoking Device" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, vaporizer or any other product name or descriptor.

"Elevation" means:

1. A scale drawing of the front, rear or side of a building or structure; or
2. A vertical distance above or below a fixed reference level.

Emergency Cache, Community. "Community emergency cache" means a collection of disaster response supplies approved by the City's Office of Emergency Services that would benefit the surrounding community.

"Emergency Shelter" means housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person. No individual or household may be denied emergency shelter because of an inability to pay as set forth in the California Health and Safety Code Section 50801(e), as may be amended.

"Erosion" means the wear and removal of the material in the earth's crust from one site and the deposition at another.

"Extended Stay Hotel" means a commercial establishment providing lodging for a fee for guests, generally marketed to long-term visitors on a temporary basis, which contain furnishings and facilities for sleeping, bathing, food preparation and cooking. Kitchen facilities within individual units may include, but are not limited to, counters, refrigerators, stoves, and ovens.

"Family" means an individual, or two (2) or more persons related by blood or marriage or legal adoption or joined through a judicial or administrative order of placement or guardianship, or unrelated persons who function together as a single household unit.

"Family Child Care Homes" means a home in which care, protection, and supervision of fourteen (14) or fewer children is regularly provided, in the caregiver's own home, for periods of less than twenty-four (24) hours per day, while the parents or guardians are away. Such homes are licensed by the State of California and include the following:

1. **"Large family child-care home"** means a home in which family child care is provided to nine (9) to fourteen (14) children, including children under the age of ten (10) who reside at the home.
2. **"Small family child-care home"** means a home in which family day care is provided to eight (8) or fewer children, including children under the age of ten (10) who reside at the home.

"Farmers' Market" means an event offering for sale produce, food items, and related goods and merchandise by certified growers authorized to sell, directly to consumers, products that are produced on land the producer controls or taken in consignment from other producers.

"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:

$$\text{FAR} = \frac{\text{Total of Gross Floor Area for All Structures on Site}}{\text{Site Area}}$$

"Frontage" means all the property fronting on one side of a street between intersecting or intercepting streets, or between a street and a right-of-way, waterway, end of dead-end street, or city boundary, measured along the street line. An intercepting street shall determine only the boundary of the frontage on the side of the street which it intercepts.

Garage, Private. "Private garage" means a detached accessory building or portion of a main building for the parking or temporary storage of automobiles of the occupants of the premises.

Garage, Public. "Public garage" means a building, other than a private garage, used for the care, repair, or equipment of automobiles, or where such vehicles are parked or stored for remuneration, hire or sale.

Game Machine, Mechanical or Electronic. "Mechanical or electronic game machine" means any machine, apparatus, contrivance, appliance, or device which may be operated or played upon the placing or depositing therein of any coin, check, slug, ball, token, or any other article or device, or by paying therefore either in advance or after use, involving in its use either skill or chance, including, but not limited to tape machine, card machine, pinball machine, bowling game machine, shuffleboard machine, marble game machine, horse racing machine, basketball game machine, baseball game machine, football game machine,

electronic video game or any other similar machine or device, exclusive of food, beverage and tobacco vending machine.

Grade, Finished. "Finished grade" means the final elevation of the ground surface after development, as shown on a precise Grading Plan.

"Grocery Store" means any premises wherein any of the following are exposed, offered for sale, or sold by retail: fresh fruits; fresh vegetables; bakery; meat; poultry, or fish products; frozen foods; and processed and pre-packaged food.

"Gross Acreage" means the total area within the boundaries of a legal lot or parcel, including any area proposed to be dedicated or reserved for public right-of-way. Adjacent lands already dedicated for public right-of-way, including public roadways, easements or other areas, shall not be included as part of the gross acreage.

"Gross Floor Area" means the total of all floors measured from the interior faces of the building, but not including areas for parking, basements, shaft enclosures, or unroofed inner courts unless any outdoor areas are used for retail purposes.

"Guest House Accessory Building" means a one accessory structure, used for the accommodation of guests. Said guest house shall not contain any kitchen or cooking facilities but may contain one (1) bedroom, one (1) living area and one (1) bathroom, and shall be limited in floor area to a maximum of twenty (20%) percent of the total floor area of the main residence.

"Habitable Space" means a room designed for living, sleeping, eating or food preparation, including but not limited to a den, study, library, home office, sewing room or recreational room and excluding such areas as garages.

"Head/Smoke/Tobacco Shop" means a retail establishment primarily engaged in the selling of smoking and tobacco products and accessories, and other products, devices and components reasonably assumed to be used for smoking and/or the inhalation or ingestion of any substances. Tobacco products may include but are not limited to cigarettes, cigars, loose leaf tobacco, tobacco pipes, Electronic Smoking Devices and accessories, vaporizers and accessories and any other product, device or component used in the inhalation of tobacco, nicotine or other substance. For the purposes of this definition only, "primarily engaged" means when thirty percent (30%) or more of products sold at the retail establishment are smoking and tobacco products and accessories, and other products, devices and components reasonably assumed to be used for smoking and/or the inhalation or ingestion of any substance.

"Home Occupation" means a business enterprise conducted within a dwelling by the residents of the dwelling and which is incidental and secondary to the use the dwelling for residential purposes.

"Hospital" means an institution that maintains and operates facilities for primarily inpatient medical care, including x-ray, laboratory and surgical, for the diagnosis, care and treatment of human illness, injury and disease (physical or mental).

"Hotel" means a commercial establishment providing lodging accommodations for a fee for transient guests, generally for stays of 30 days or less, with access to rooms or units primarily from interior lobbies, courts or halls. A hotel may include limited facilities for storage and preparation of food and beverages within individual rooms, such as coffee makers, mini refrigerators and microwave ovens.

"Individual Violation" means a noncontinuous condition or occurrence in violation, infringement, or breach of a provision of this chapter that does not exceed twenty-four (24) hours in duration. An Individual Violation may be recurrent. Examples of "Individual Violations" for the purposes of this Chapter include, but are not limited to, the illegal outdoor storage of materials, entertainment events, or outdoor seating in violation of a use permit.

"Instruction, group and private" means the provision of instructional services, including but not limited to photography, fine arts, crafts, dance or music studios, driving schools, diet centers, yoga, martial arts studios, after school programs or similar uses. This definition does not include instruction received through trade or vocational schools nor a post-secondary school or child-care centers. Private instruction includes fewer than six (6) students or clients at any one time and group instruction includes six (6) or more students or clients at any one time.

"Intensity" means the degree to which land is used, measured by a combination of the type of land used and the amount of land or floor area devoted to that use.

"Intensification of Use" means to alter the character of a use to the extent that the use generates new or different impacts on the health, safety, or welfare of the surrounding neighborhood, including but not limited to the level or amount of traffic, noise, light, smoke, odor, vibration, outdoor storage, or other similar conditions associated with the use.

"Junk Yard" means the use of more than one hundred (100) square feet of the area of any lot for the storage of junk, including scrap materials and metals, or wrecked vehicles and machinery, whether or not sale of such junk is made or proposed.

"Kennel" means any lot or premises on which four (4) or more dogs, more than four (4) months of age, are kept.

"Kitchen (for residential uses)" means a residential kitchen shall be enclosed and interior to the dwelling unit utilized for the preparation of food and include two (2) or more of each of the following:

1. A sink (typically larger than 14" × 17");
2. A full-size refrigerator (typically larger than 24" × 64");
3. A 220-V electrical service outlet (typically used for major cooking appliances such as a stove, oven or cooking range).

"Laundromat" means a primarily self-service facility where customers wash and dry clothing and other textiles in on-site machines, and where ancillary full-service laundry services may also be offered.

"Live-Work Unit" means a dwelling unit with a separate living space attached to a workspace within the same unit. The workspace and the living space must be occupied by the same tenant. Live/work uses allow one non-residential employee, more customers, and a broader range of uses than permitted in Home Occupations. See XI-10-13.12 within Special Uses for Live-Work Unit purpose, intent, and regulations.

Uses permitted or conditionally permitted within the underlining zoning district apply unless otherwise prohibited in Section 10-13.12(E). Additional uses covered by this designation include, but are not limited to:

Art and craft work;

Offices, Business and Professional-only use;

~~Accountant;~~

~~Architects;~~

Artists and artisans;

~~Attorneys;~~

~~Computer software and multimedia related professionals;~~

~~Engineers;~~

Fashion;

~~Interior and other designers; and~~

~~Commercial service.~~

"Loading Area" means an open area, other than a street or alley, used for the loading or unloading of vehicles.

"Loading Space" means an off-street space or berth on the same lot with a building, or contiguous to a group of buildings, for the temporary parking of a commercial vehicle while loading and unloading merchandise or materials, and which abuts upon a street or other appropriate means of access.

"Lot" means land occupied or to be occupied by a building, or unit group of buildings, and accessory buildings, together with such yards and lot area as are required by this Chapter and having its principal frontage upon a street or a place approved by the Commission.

1. **"Corner lot"** means a lot, or portion thereof, not greater than seventy-five (75) feet in width and situated at the intersection of two (2) or more streets.
2. **"Flag lot"** means a lot having access or an easement to a public or private street by a narrow, private right-of-way.
3. **"Interior lot"** means a lot other than a corner lot.
4. **"Key lot"** means a lot with a side line that abuts the rear line of any one (1) or more adjoining lots.
5. **"Reversed corner lot"** means a corner lot the street line of which is substantially a continuation of the front line of the lot to its rear.
6. **"Through lot"** means a lot having frontage on two (2) paralleled or approximately paralleled streets.

"Lot Dimensions."

1. **"Lot Area"** means the total horizontal area within the lot lines of a lot.
2. **"Lot Depth"** means the horizontal distance between the front and rear lot lines, measured along the median between the two (2) side lot lines.

3. **"Lot Lines"** means the lines bounding a lot as defined herein.

- a. In the case of an irregular shaped lot or a lot with more than four (4) sides where there is question as to which are the front, side, and rear property lines in order to determine setbacks and required yards, there shall be at a minimum of one (1) front property line and one (1) rear property line. The rear property line shall be the lot line directly parallel to the front property line and of a width of at least thirty (30) feet in length. If no such lot line exists, the Director of Planning shall make the final determination as to the rear property line of such lot.

4. **"Lot Width"** means the horizontal distance between the side lot lines, measured at right angles to the lot depth at a point midway between the front and rear lot lines.

"Manufacture" means preparation, making treatment or processing of articles as merchandise.

"Massage Establishment" means any establishment having a fixed place of business where any person, firm, association, partnership, corporation or other entity engages in, conducts, or carries on, or permits to be engaged in, conducted or carried on, any massage for compensation. For the purpose of this Chapter, the term "massage establishment" shall also include, but not be limited to, any business providing off-premises massage services.

"Massage Establishment, Accessory" means an establishment that provides massage which is incidental to the primary business, where the owner of the primary business is responsible for the massage services and conduct of the massage technician(s) employed at the location.

"Medical and Dental Offices" means a building or place where (a) member(s) of the medical profession, dentists, chiropractors, osteopaths, acupuncturists, and physicians or occupational therapists provide diagnosis and treatment to the general public without overnight accommodation and shall include such uses as reception areas, offices, consultation rooms, pharmacy and x-ray providing that all such uses have access only from the interior of the building or structure.

"Medical and Dental Clinics" means the same as Medical and Dental Offices, except they also include minor operating rooms and out-patient surgery with no overnight stay.

"Medical Support Laboratory" means a facility for scientific laboratory analysis of medical resources. The analysis is generally performed for an outside customer, to support the work of that customer.

"Micro-mobility Device" means a small, lightweight vehicle operating at a speed typically below 15 miles per hour and driven by the individual user, such as bicycles, e-bikes, and electric scooters.

"Mixed Use Development" means a development that consists of vertical or horizontal combination of residential and commercial uses within a single building or site.

"Mobile Home" means a transportable structure designed to be used as a dwelling unit when connected to required utilities.

"Mobile Home Accessory Building or Structure" means any awning, portable, demountable or permanent cabana, ramada, storage cabinet, carport, fence, windbreak or porch established for the use of the occupant of the mobile home.

"Mobile Home Lot" means a portion of mobile home park designated or used for the occupancy of one mobile home.

"Mobile Home Park" means any areas or tract of land where mobile home lots are rented or leased held out for rent or lease to accommodate mobile homes used for human habitation.

"Mobile Home Stand" means the area on which the mobile home is placed when it is stationed on the lot, including the land lying under the mobile home.

"Mobile Recycling Unit" means an automobile, truck, trailer or van, licensed by the Department of Motor Vehicles or bins, boxes or containers transported by a truck, van or trailer, and used for the collection of recyclable materials.

"Motel" means a building or group of attached or detached buildings providing lodging accommodations for a fee for transient guests, generally for stays of 30 days or less, with access to each room or unit through an exterior door. Motels are distinguished from hotels primarily in that the former provide direct independent access to, and adjoining parking for, guest rooms and do not provide 24-hour guest services.

"Natural Land Slope" means the average slope of the lot in percent, determined by observation on simple slopes, or more precisely by the formula:

$$S = 100 \frac{I}{L} \sqrt{A}$$

Where:

I is the contour interval in feet;

L is the combined length of the contour lines in scale feet; and

A is the net area of the lot in square feet.

"Nonconforming Building" means a building or structure or portion thereof lawfully existing at the time this Chapter became effective, which was designed, erected or structurally altered, for a use that does not conform to the use regulations of the district in which it is located. A nonconforming building shall also mean any building or structure built in compliance with all city land use and zoning laws in existence at the time and which does not comply with current development standards, including but not limited to height, setbacks, floor area ratio, maximum lot coverage, maximum size of residence, front yard paving and impervious surface coverage.

"Nonconforming Use" means a use which lawfully occupied a building or land at the time this Chapter became effective and which does not conform to the use regulations of the district in which it is located.

"Occupation" means a principal business, profession or vocation in which one is regularly and habitually engaged for the purpose of compensation for a livelihood.

"Offices, Business and Professional" means offices of firms or organizations providing professional, management, or administrative services, including but not limited to:

Accounting;

Architectural;

Business and management consulting;

Computer and technology;

Engineering; Insurance;

Insurance;

Interior design;

Graphic design;

Real estate;

Title companies;

Legal services

This classification does not include medical and dental offices, which have a separate definition.

"Open-Air Business" means drive-in business where persons are served in automobiles.

"Outdoor Music" means live music, both acoustic and amplified, including live individual musicians, bands, and disc jockeys (DJs), that takes place on a patio or other outdoor space. Outdoor music as defined and regulated in this Chapter shall also include recorded background music played at a public establishment such as a restaurant, bar, retail store, or other business.

"Owner/Occupant" means any person owning property, as shown on the last equalized assessment roll for City taxes, or the lessee tenant, or other person having control or possession of the property.

"Parcel" shall mean a legal lot of record.

Parking Area, Private. "Private parking area" means an open area, other than a street or alley, used for the parking of the automobiles of occupants of a building.

Parking Area, Public. "Public parking area" means an open area, other than a private parking area, street or alley, used for the parking of automobiles and available for public or quasi-public use.

Parking Space, Automobile. "Automobile parking space" means a space within a building or a private or public parking area for the parking of one (1) automobile.

"Parking Structure" means a structure or portion thereof composed of one or more levels or floors used exclusively for the parking or storage of motor vehicles. A parking structure may be totally below grade (as in an underground parking garage) or either partially or totally above grade with those levels being either open or enclosed.

"Patio Cover" means a one-story structure, not exceeding twelve (12) feet in height and open on one (1) or more sides (provided, however, that the open sides may be closed with insect or plastic screening that is permeable material and not in any manner that would obstruct the free passage of light or air) used for recreational, outdoor living purposes only and not as carports, storage rooms or habitable rooms.

"Person" means a natural person, his heirs, executors, administrators, or assigns, and also includes a firm, partnership or corporation, its or their successors or assigns, or the agent of any of the aforesaid.

"Personal Services" means a commercial establishment which provides services of a personal or aesthetic nature directly to consumers, including but not limited to:

1. Beauty salons and barber shops;
2. Nail salons;
3. Tanning salons;
4. Hair removal salons;
5. Tattoo studios;
6. Body piercing studios.

"Place" means an open, unoccupied space, other than a street or alley, permanently reserved as the principal means of access to abutting property.

"Places of Assembly." See "Assembly"

"Private Recreational Areas" means any usable open space or recreational facility available for use by all the site's residents.

"Property" means all real property and fixtures, including, but not limited to, parking lots, sidewalks, gutters, driveways, walkways and any building and structure located on such property.

"Public Right-of-Way" as defined in Section V-500-1.13 of the Milpitas Municipal Code, shall mean the full width of the right-of-way of any street, as defined in the California Vehicle Code used by the general public, whether or not such street has been accepted as and declared to be part of the City system of streets, including streets forming a part of the State Highway System. "Public right-of-way" also includes easements where the City is the grantee of the easement and property owned by the City of Milpitas or the Milpitas Redevelopment Agency and any public park, trail, or right-of-way within the City of Milpitas.

"Public Safety Use" means facilities for public safety or emergency services, including police and fire protection.

"Public Service Use" means facilities owned and operated by governmental agencies that provide services to the general public, including but not limited to federal, state and municipal administration buildings, courthouses, and post offices.

"Public Use" means a use intended to serve the whole city and/or region and operated by a public institution or entity. Such uses have the purpose primarily of serving the general public and include public schools, recreational facilities, government housing, government clinics, and the like.

"Public Utilities" means facilities for the production, storage, treatment, transmission and/or distribution of electricity, natural gas, water, wastewater, and telecommunications and other similar essential services.

"Quasi-Public Use" means a use intended to serve the whole city and/or region and are operated by a private, nonprofit, educational, religious, recreational, or charitable, and having the purpose primarily of serving the general public. Such uses include religious facilities, private schools, community theaters, community and club organizations, private hospitals, places of assembly and the like.

"Recreation or Entertainment Facility" means a commercial establishment (indoors or outdoors) where patrons can actively participate in entertainment or recreation activities either independently or in conjunction with other uses.

"Recyclable Material" means reusable material including but not limited to metals, glass, plastic and paper, which are intended for reuse, remanufacture, or reconstitution for the purpose of using the altered form. Recyclable material does not include refuse or hazardous materials. Recyclable material may include used motor oil collected and transported in accordance with the California Health and Safety Code.

"Recyclable Processing Facility" means a building or space used for the collection and processing of recyclable materials. Processing means the preparation of material for shipment by such means as baling, briquetting, compacting, flattening, grinding, crushing, sorting, shredding, cleaning and remanufacturing.

"Repair and Cleaning, Small Items" means a commercial establishment that performs cleaning, repair, and alteration of small consumer and household items, such as laundromats (self-service laundries), dry cleaning pick-up stores (where cleaning is done off-site), tailors, shoe repair shops, jewelry and watch repair shops, and locksmiths. Excludes dry-cleaning plants, business equipment and computer repair, heavy equipment and machinery repair, repair and servicing of large and bulky household items such as appliances and furniture, or vehicle repair.

"Research and Development (R and D) Uses" means one or more buildings which feature a combination of offices, manufacturing, assembly, warehousing, distribution, laboratories and clean rooms, and ancillary uses such as cafeterias and employee fitness facilities.

"Restaurant" means an establishment in which the principal use is the preparation and sale of food and non-alcoholic beverages. If approved, the service of alcoholic beverages is incidental to the principal use.

1. **"Drive-in"** means a restaurant that delivers prepared food and/or beverages to customers in motor vehicles, regardless of whether or not it also serves prepared food and/or beverages to customers who are not in motor vehicles, for consumption either on or off the premises.
2. **"Drive-thru"** means a restaurant which includes one (1) or more drive-through lanes for the ordering and receipt of foods and/or beverages by patrons remaining in their vehicles.
3. **"Fast-food"** means a restaurant that offers quick food service, which is accomplished through a limited menu of items already prepared and held for service, or prepared. Orders are generally not taken at the customer's table, and food is generally served for consumption either on or off the premises. For the purposes of parking requirements, the ordering or take-out area is defined as the counter and the area between the counter and the main entry to the establishment.
4. **"Take-out"** means a restaurant where foods and/or beverages are sold directly to the customer in a ready-to-consume state for consumption off site with no seats onsite. For the purposes of parking requirements, the ordering or take-out area is defined as the counter and the area between the counter and the main entry to the establishment.

"Retail Stores, General Merchandise" means retail trade establishments selling lines of merchandise. Examples of general retail stores ~~These stores~~ and lines of merchandise include but are not limited to:

1. Art supply;
2. Antiques;

3. Bakeries (retail only);
4. Bicycles;
5. Books;
- ~~5~~6. Candy stores;
- ~~6~~7. Clothing and accessories;
- ~~7~~8. Collectables;
- ~~8~~9. Fabrics and sewing supplies;
10. Floral;
- ~~8~~11. Gifts (novelties and souvenirs);
- ~~9~~12. Hobby materials;
- ~~10~~13. Jewelry;
- ~~11~~14. Luggage and leather goods;
- ~~12~~15. Music stores;
16. Office supplies and stationery;
- ~~13~~17. Sporting goods and equipment;
- ~~14~~18. Toys and games;
19. Tuxedo and formalwear rental;
- ~~15~~20. Variety stores;
- ~~16~~21. Video rentals and sales.

"Reverse Vending Machine" means an automated mechanical device which accepts at least one or more types of empty beverage containers including, but not limited to aluminum cans, glass and plastic containers, and issues a cash refund or a redeemable credit slip. A reverse vending machine sorts, and processes containers mechanically provided that the entire process is enclosed within the machine. In order to accept and temporarily store all three container types in a proportion commensurate with their relative redemption rates, and to meet the requirements of certification as a recycling facility, multiple grouping of reverse vending machines may be necessary.

A bulk reverse vending machine is a reserve vending machine that is larger than fifty (50) square feet; is designed to accept more than one container at a time; and will pay by weight instead of by container.

"Satellite Dish Antenna or Satellite Antenna" means any device incorporating a reflective surface that is solid, open mesh or bar configured to form a shallow dish, cone, horn or cornucopia used to transmit and/or

receive electromagnetic signals. This definition includes antennas that are sometimes called "SES," "TVBS," and "DBS."

"School: Elementary, Middle, or High" means an institution which offers instruction in the several branches of learning and study required to be taught in the public schools by the Education Code of the State of California.

"School, trade and vocational" means an establishment where training is received to learn a particular trade or craft that involves skilled labor. Trades and crafts include but are not limited to the various construction trades, auto mechanics, machining, HVAC installation/repair/maintenance and similar trades and crafts.

Setback. See "Yard."

"Short-Term Rental Unit" or "Short-Term Rental" or "STR" means the use of a dwelling unit, including, without limitation, a single-family, two-family, or multiple-family dwelling unit, mobile home, or any portion of such dwellings, rented for occupancy for dwelling, lodging, or sleeping purposes for a period of 30 or fewer calendar days, counting portions of days as full calendar days.

Signs. For purposes of Section XI-10-24, Sign Regulations, of this Chapter, the following definitions shall apply:

1. **"Abandoned Signs"** means any sign used for advertising or other purposes where the business it advertised or the use or event it supported has ceased operation for or occurred more than ninety (90) days prior to the sign's posting.
2. **"Abate"** means to repair, replace, remove, destroy, or otherwise remedy the condition in violation of this Chapter.
3. **"A-Frame Sign"** means and includes a sign that is portable, is capable of standing without support or attachment, and folds open in the form of an "A" or "sandwich-board".
4. **"Ancillary services sign"** means a sign displaying ancillary services such as smog services, lotto, or that represent trade affiliations, such as credit card services, or other similar services and not for the purpose of displaying products being sold.
5. **"Approved Plastics"** means those materials specified in the U.B.C. Standard No. 52-1 which have a flame spread rating of 225 or less and a smoke density not greater than that obtained from the burning of untreated wood under similar conditions when tested in accordance with U.B.C. Standard No. 42-1 in the way intended for use. The products of combustion shall be no more toxic than the burning of untreated wood under similar conditions.
6. **"Architectural Sign"** means and includes a sign used for advertising purposes which constitutes an integral part of a roof or marquee and is designed with an intent and purpose to relate to the architectural style of the main building.
7. **"Area Identification Sign"** means and includes a permanent sign which serves to identify an area.
8. **"Awning sign"** means any sign or graphic attached to, painted on or applied to an awning or canopy.

9. **"Balloon Sign"** means and includes any large [over three (3) cubic feet in size] inflatable air or helium balloon that is used as an advertising device for any business or promotional event.
10. **"Banner Sign"** means and includes a temporary sign composed of lightweight, flexible, non-rigid material either enclosed or not enclosed in a rigid frame.
11. **"Blade Sign"** means a pedestrian oriented sign, adjacent to a pedestrian walkway or sidewalk, attached to a building wall, marquee, awning, or arcade with the exposed face of the sign in a plane that is perpendicular to the plane of the building wall.
12. **"Building Perimeter"** means the total exterior wall length for any and all buildings intended for human occupancy, as measured at the ground elevation. No second story or subsequent upper story areas shall be considered as a part of this calculation.
13. **Canopy Sign.** See awning sign.
14. **"City Identification Sign"** means and includes a sign placed at the point of entry to the City of Milpitas for the purpose of informing a person that they are entering the City of Milpitas.
15. **"Construction Sign"** means and includes a sign placed on the property where site work, building construction and/or a tenant improvement within an existing building is in progress. The sign may denote that a business will be opening soon, the opening date, names of the architect, engineer, contractor, future business and lending agency.
16. **"Directional Sign"** means a sign which guides and directs motorists to a specified destination in the most direct manner possible.
17. **"Display Surface"** means the area made available by the sign structure of building surface for the purpose of displaying the advertising message.
18. **"Electric Sign"** means any sign containing electrical wiring, but not including signs illuminated by an exterior light source.
19. **"Erect"** means to build, construct, attach, hang, place, suspend or affix.
20. **"Exposed raceway"** means an enclosure or conduit that is used to conceal wiring for a lighted sign and is visible from any elevation, typically located between the sign and the building to which the sign is attached.
21. **"Flag"** means a visual device with no commercial copy, usually rectangular in shape and made of a cloth material suspended by, or attached to, a pole or post and may be raised or lowered.
22. **"Flag sign"** means a visual display device with commercial copy, usually rectangular in shape and made of a cloth material suspended by, or attached to, a post, or pole and may be raised and lowered.
23. **"Freestanding Sign"** means a sign which is supported by one or more uprights, poles, or braces in or upon the ground, or partially supported and attached to any building, other structure, or foundation on the ground.
24. **"Garage Sale Sign"** means a sign used primarily for the purpose of advertising a "garage sale" and/or "yard sale" at a residence.

25. **"Grand Opening Sign"** means and includes banners, pennants, flags, balloons, and advertising devices when used only for bona fide grand-opening functions, new ownership, name change, or the reopening of a business that has completely closed for remodeling for at least two weeks.
26. **Graphic Panel, Freestanding.** Freestanding graphic panel means a freestanding sign located within five feet of the main building wall, which relates to the architecture of the building and depends primarily on a graphic image for delivering its advertising message. Graphic panels do not count as freestanding signs. The display area on graphic panels counts towards overall sign area.
27. **"Impact Resistive Plastic"** means any plastic material capable of resisting fifty (50) foot pounds of force as tested in accordance with ANSI/UL 972 Multiple Impact Test or any similar test procedure.
28. **"Information Sign"** means and includes signs providing courtesy information, or direction to the public without advertising the business products, or services such as hours, entrance, exit, self-serve, credit cards, restrooms, telephone drive-up, or which serves to direct motorist and pedestrians on private property.
29. **"Joint Use Sign"** means and includes a freestanding sign for a commercial district under multiple ownerships where freestanding signs for each parcel for which signage is desired is infeasible. The commercial district shall be characterized by close proximity of the businesses and small parcel size. A common parking field and common vehicular circulation are encouraged.
30. **"Logo"** means a trademark, or symbol of an organization which is registered with the federal or State government and consistently used in conducting the business activities of said organization.
31. **"Marquee"** means a permanent roofed structure, attached to, and support by the building and projecting beyond the main building.
32. **"Multi-use Structures"** means any commercial, industrial, quasi-public, or agricultural farm products sales use, containing five or more stores, or businesses on a single parcel of land.
33. **"Mural"** means a display, or illustration painted on a building, or wall within a public view not intended to advertise a product, service, or business, and therefore is not considered a sign.
34. **"Mural sign"** means a display, or illustration painted on a building, or wall intended to advertise a product, service, or business.
35. **"Noncombustible Material"** means any material which will not ignite at, or below a temperature of one thousand two hundred (1,200) degrees during an exposure of five (5) minutes, and which will not continue to burn or glow at that temperature. Tests shall be made as specified in U.B.C. Standard No. 4-1.
36. **"Nonstructural Trim"** means the molding, battens, capping, nailing strips, latticing, cutout, or letters and walkways which are attached to the sign structure.
37. **"Off-site Advertising Display"** means any sign that advertises, or informs about a business organization, event, goods, products, services, or uses not available on the property upon which the sign is located.

The term "Off-site Advertising Sign" does not include Joint Use Sign, Temporary Tract Advertising Signs for subdivisions under construction in the City, Open House Directional Signs, Garage Sale Signs, Off-site Public Information Signs, off-site directional signs for purposes of identifying regional shopping centers, and Temporary Tract Advertising Signs.

38. **"Off-site Directional Sign"** means any sign that provides direction to retail, community, and cultural events not available on the property upon which the sign is located.

The term "Off-site Directional Sign" does not include Garage Sale Signs, Joint Use Signs, Official City or City-sponsored signs, Off-site Directional Signs identifying regional shopping centers, Off-site Public Information Signs, Open House Directional Signs, and Temporary Tract Advertising Signs.

39. **"Off-site Public Information Sign"** means a sign that is placed proximate to a major city entry on privately owned property that is used to provide non-advertising information and/or identification symbols or plaques to the public for civic organizations, service clubs or other quasi-public uses and is erected within the public right-of-way.
40. **"Open House Directional Sign"** means a sign, no larger than six (6) square feet in sign area per side, used primarily for the purpose of directing traffic to a house being offered for sale or lease.
41. **"Other Advertising Structure"** means any device erected or used for the same purpose as a sign, whether erected, or used:
- a. Exclusively for advertising purposes, upon which any poster bill, printing, painting device, or other advertisement or identification of any kind whatsoever may be placed, posted, painted, fastened, or affixed.
 - b. Exclusively for advertising purposes and including any spectacle, display or advertising statuary.
42. **"Permanent Sign"** means every sign except temporary sign as defined herein.
43. **"Political Sign"** means a sign which is designated to influence the action of the voters, and election, or defeat of a candidate for the nomination, or election to any public office, or a measure appearing on the ballot at any national, state, district, or local election.
44. **"Portable"** means an object that is capable of being borne or carried, easily transported, or conveyed without difficulty.
45. **"Portable Sign"** means and includes a sign that is portable and capable of being borne, or carried, easily transported, or conveyed without difficulty, is capable of standing without support or attachment, is unattached to any structure, and is used for advertising purposes.
46. **"Projection"** means the distance by which a sign extends over public property or beyond the building line.
47. **"Projecting Sign"** means a sign other than a wall sign which projects from and is supported by a wall of a building or structure.

48. **"Public Information Sign"** means a sign erected for the sole purpose of displaying advertisement for community activities and/or identification symbols or plaques for civic organizations or service clubs.
49. **"Public Street Frontage"** means a publicly owned street immediately adjacent to the parcel, for purposes of sign area and height calculations. Public streets for which the parcel does not have access rights are not included for purposes of any sign calculations.
50. **Raceway.** See "exposed raceway."
51. **"Regional Shopping Center"** means any commercial development on one (1) or more parcels of land which are contiguous, or across from a right-of-way which contains a gross land area of at least thirty (30) acres or a gross building area of at least 200,000 square feet. Current regional shopping centers are McCarthy Ranch Marketplace, the Town Center shopping center, and the Great Mall and its out-parcels zoned General Commercial.
52. **"Roof Sign"** means a sign erected upon or above a roof or a part of a parapet of a building or structure.
53. **"Scoreboard Sign"** means a sign located on scoreboard structures located in an adult or youth outdoor playing field on public property and shall be for products or businesses available to persons of all ages.
54. **"Shopping Center"** means any commercial development containing five (5) or more stores or businesses on one (1) or more parcels of land operating as an integrated use and having a gross parcel area of five (5) or more acres.
55. **"Shopping Center Identification Sign"** means a sign located on the site of a shopping center or regional shopping center that states the name of the shopping center or regional shopping center.
56. **"Sign"** means every announcement, declaration, demonstration, display, illustration insignia, surface, or space when erected or maintained out of doors in view of the general public for identification, advertisement or promotion of the interests of any person.
57. **"Sign Area"** means the area of a sign to be calculated that includes all lettering, wording, and accompanying designs or symbols, together with any background of a different material or color than the remainder of the wall of the building to which is affixed or upon which it is painted. In the case of a freestanding sign, the supports or uprights on which any sign is supported should not be included in determining the sign area unless such supports or uprights are designed in a manner as to form an integral background of the sign.

Where the sign consists of individual letters or symbols, the area shall be considered to be that of the smallest rectangle, circle, square, or triangle which can be drawn to encompass all of the letters. Provided however, that where such individual type letters or symbols are separated more than thirty-six (36) inches from each other, those letters or symbols shall be calculated separately.

If the sign has more than one (1) advertising surface, the sum of all the areas of all such surfaces shall be the area of the advertising surface of such sign except that, if two (2) surfaces on the same face in opposite directions (i.e., the relative angles between the directions they face is one hundred eighty (180) degrees) and the distance between such two (2) surfaces is not more than

twenty-four (24) inches, then the area of only one of the two surfaces (the largest if they equal) shall be included in the computation.

58. **"Sign Program"** means a specific set of design standards established for the purpose of unifying a variety of signs associated with a multitenant or multiuse project, building or complex of buildings.
59. **"Sign Surface"** means the surface of the sign upon, against or through which the message is displayed or illustrated.
60. **"Snipe sign"** means temporary or portable signs advertising events that are fastened to fences, trees, utility poles, or other structures or fixtures and also including signs on sticks stuck in the ground and usually found off-site. These do not include real estate, political or open house signs.
61. **"Statuary Sign"** means statuary used for advertising purposes or representing the logo of a business.
62. **"Temporary Sign"** means any sign, banner, flag, valance, pennant, streamer, whirligig or advertising display, constructed of cloth, canvas, fabric, cardboard, plywood or other light material with or without a frame, whether attached or portable, and designed or intended to be displayed for a short period of time.
63. **"Temporary Promotional Sign"** means any temporary Balloon Signs, banners, and similar advertising devices when used only for special promotional events.
64. **"Temporary Tract Advertising Sign"** means a uniformly designed sign which advertises a residential development.
65. **"Vehicle-Mounted Sign"** means a sign, used for the purpose of advertising, larger than three (3) feet by three (3) feet mounted on, attached to or capable of being borne or carried, easily transported or conveyed without difficulty by a vehicle, where that vehicle is parked on public or private property. This definition does not include signs on delivery vehicles in the act of making a delivery or signs on vehicles parked on residential driveways or public streets.
66. **"Wall Sign"** means any sign painted on, attached to or erected against the wall of a building or structure.
67. **"Window Sign"** means any sign painted, attached, glued or otherwise affixed to the interior or exterior surfaces of a window or suspended or located within three (3) feet of the window for the primary purpose of being visible from the exterior of the building.

"Single Household Unit" means the functional equivalent of a traditional family, whose members are a non-transient interactive group of persons jointly occupying a single dwelling unit, including the joint use of common areas which are not compartmentalized, such locked cabinets or doors. A single housekeeping unit shall be limited to one (1) kitchen and shall have permanent internal access to all rooms within the dwelling unit, except as provided for Accessory Dwelling Units.

"Single Room Occupancy (SRO) Residence" means a multi-tenant building consisting of single room dwelling units that are the primary residence of its occupants, containing either individual or shared kitchen and bathroom facilities. These units are small (generally less than 350 square feet), and provide a valuable

source of affordable housing for individuals and can serve as an entry point into the housing market for formerly homeless people.

Slope. Same as "Natural Land Slope."

"Specific plan" means a detailed plan for the development of a specific area. Specific plans are a significant tool to implement the General Plan. A specific plan documents the proposed distribution, location, extent and intensity of major components of public and private transportation, sewage, water, drainage, solid waste disposal, energy, parks and other essential facilities proposed to be located within or needed to support the land uses described in the plan, as well as implementation and financing methods and added benefits to the City as a whole.

Stable, Private. "Private stable" means a detached accessory building for the keeping of horses owned by the occupants of the premises and not kept for remuneration, hire or sale.

Stable, Public. "Public stable" means a stable other than a private stable.

"Story" means that portion of a building included between the surface of any floor and the surface of the floor next above it, or if there be no floor above it, then the space between such floor and ceiling next above it.

Story, Half. "Half story" means a story under a gable, hip or gambrel roof, the wall plates on which on at least two (2) opposite exterior walls are not more than four (4) feet above the floor of such story.

"Street" means a permanently reserved thoroughfare which affords principal means of access to abutting property.

"Structure" means anything constructed or erected, which requires location on the ground or is attached to something having a location on the ground.

"Supportive Housing" means housing with no limit on length of stay, that is occupied by the target population as defined in Section 11302 of Title 42 of the United States Code, as may be amended, and that is linked to onsite or offsite services that assist the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community as defined in the California Health and Safety Code Section 50801(e), as may be amended.

"Thrift Store" means any profit or nonprofit business, organization, group or otherwise that engages in or specializes in the sale or resale of previously owned or used goods and merchandise from an area greater than 25 percent of the total floor area devoted to retail sales and whose goods and merchandise are donated or primarily donated. A specialty retail store that sells used goods or merchandise not donated for sale, including but not limited to used record stores, used book stores, used furniture stores, and sports trading card stores, shall not be considered a thrift store for the purpose of this Chapter.

"Townhouses" means dwelling units that are attached at their sides in groups of three or more and are sited on individual lots with vehicular access from driveways. Private rear yards or patios and common open space may be part of a townhouse development.

Trailer, Automobile. "Automobile trailer" means a vehicle without motive power designed to be drawn by a motor vehicle and to be used for human habitation or for carrying persons and property, including a trailer coach or house trailer.

"Transitional Housing" means buildings configured as rental housing developments, but operated under program requirements that call for the termination of assistance and recirculation of the assisted unit to

another eligible program recipient at some predetermined future point in time, which shall be no less than 12 months as defined in the California Health and Safety Code Section 50801(e), as may be amended.

"Tri-laminate Asphalt Composition" means an asphalt composition roof material that is comprised of three layers of tile adhered together to create one shingle and when installed overlap with another row of three-layered tile for a total minimum thickness of $\frac{7}{8}$ inches.

"Tutoring Centers" means facilities offering academic instruction to individuals or groups in a classroom setting.

"Unreasonable Period of Time" means not less than thirty (30) calendar days following notification by the City to the owner/occupant pursuant to this Chapter that the property is in violation of this Chapter. The City Manager, upon a finding that the violation in question constitutes a threat to the health and safety of any person may designate a time period of thirty (30) calendar days or less upon notice to the owner/occupant to abate the nuisance. Prior notice shall not be required for summary abatement pursuant to this Chapter.

"Usable Open Space" means any open space, the smallest dimension of which is at least six (6) feet and which is not used as storage or for movement of motor vehicles. Yards abutting a public street, which are not adequately screened for privacy, in the opinion of the Planning Commission, shall not qualify as usable open space.

"Use" means the purpose for which land or a building is arranged, designed or intended, or for which either land or building is or may be occupied or maintained.

"Video Sales and Rental Store" means any place of business which includes the sale or rental of prerecorded video tapes, laser discs, compact discs, or any other medium which projects pictures on a screen.

Wireless Communications Facilities Definitions. For the purposes of wireless communications facilities, the following definitions shall apply:

1. **"Commercial Wireless Communication Facility"** means a wireless communication facility operated by a for-profit business or for-profit purposes. See by contrast, "Noncommercial wireless communication facility."
2. **"Noncommercial Wireless Communication Facility"** means a wireless communication facility operated by a government agency, a nonprofit organization, a for-profit business for nonprofit purposes or a private citizen for personal use. It includes all amateur radio facilities. See by contrast, "Commercial wireless communication facility."
3. **"Stealth Wireless Communications Facility"** means any antenna designed to be architecturally integrated into a building that is architecturally consistent with the building design. Examples include a steeple, cupola or tower element on a building and do not include flag poles, monopoles or other structures designed to house antenna and resemble natural features.
4. **"Wireless Communication Facility"** means the equipment and associated structures needed to transmit and/or receive electromagnetic signals. A wireless communication facility typically includes antennas, supporting structures (including, but not limited to, monopoles, utility structures, buildings and accessory structures), enclosures and/or cabinets housing associated equipment, cable, access roads and other accessory development.

"Yard" means an open space, other than a court, on a lot, unoccupied and unobstructed, except eaves, from the ground upward, except as otherwise provided in this Chapter. Where applicable, yards shall be measured perpendicularly from the property line to the face of the nearest exterior wall of any main building, except as otherwise provided in this Chapter (See Subsection XI-10-55.04-11). Setback shall be synonymous with yard.

Yard, Front. "Front yard" means a yard extending across the full width of the lot, the depth of which is the minimum horizontal distance between the front lot line and a line parallel thereto on the lot.

Yard, Rear. "Rear yard" means a yard extending across the full width of the lot between the most rear main building and the rear lot line; the depth of the required rear yard shall be measured horizontally from the nearest point of the rear lot line toward the nearest exterior wall of the main building.

Yard, Side. "Side yard" means a yard between the main building and the side lot line extending from the front yard, or front lot line where no front yard is required, to the rear yard; the width of the required side yard shall be measured horizontally from the nearest point of the side lot line toward the nearest exterior wall of the main building.

Zone. See "district."

SECTION 5. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 4

Title XI, Chapter 10, Subsections 4.02 ("Residential Use Table") and 4.03 ("Residential Special Uses") of the Milpitas Municipal Code are hereby amended to read as follows:

**Table XI-10-4.02-1
Residential Zone Uses**

Use	R1	R2	R3	R4	R5
1. Commercial					
Commercial services ^{1,2}	NP	NP	C	C	C
Personal services ^{1,2}	NP	NP	C	C	C
Retail ¹	NP	NP	C	C	C
2. Professional Offices and related uses					
Offices, business and professional ^{1,2}	NP	NP	C	C	C
3. Public/Quasi-Public and Institutional Uses					
Child care center	C	C	C	C	P
Nursing home ³	NP	C	C	C	C
Park, playground or community center (non-profit)	C	C	C	C	C
Parking lots	C	C	C	C	C
School (not trade or vocational)	C	C	C	C	C
Places of Assembly	C	C	C	C	C
4. Residential Uses					
Condominiums and condo conversions	NP	SFR: C Duplex: C	C	C	C
Duplex (Two dwellings)	NP	P	NP	NP	NP
Group dwelling	NP	NP	NP	C	C
Guest house	C	NP	NP	NP	NP

Manufactured home ⁴	P	P	NP	NP	
Multi-family dwellings (Three or more units)	NP	NP	P	P	P
Planned unit development ⁵	P	P	P	P	P
Accessory dwelling unit ⁶	P	SFR: P Duplex: P	P	P	P
Single-family dwelling	P	P	NP	NP	NP
Single-room occupancy residences ⁷	NP	NP	C	C	C
Transitional and supportive housing	P ⁸	P ⁸	P ⁹	P ⁹	P ⁹
5. Restaurants or Food Service					
Restaurants ¹	NP	NP	C	P/C	P/C
Catering Establishment ¹⁰	NP	NP	NP	NP	NP
Mobile Food Vending (individual vehicle) ¹¹	P ^{12, 13, 14}	P ^{12, 13, 14}	P ^{12, 13, 14}	P ^{12, 13, 14}	P ^{12, 13, 14}
Mobile Food Park	NP	NP	NP	NP	NP
Commissary ¹⁰	NP	NP	NP	NP	NP
6. Unclassified Uses					
Agriculture ¹⁰¹⁵	P	P	P	NP	NP
Boarding house (three or more persons)	NP	C	C	C	C
Golf course ¹¹¹⁶	C	C	C	NP	NP
Live work units ¹²¹⁷	NP	NP	C	C	C
Model home complex ¹³¹⁸	P	P	P	P	P
Short-Term Rentals ¹⁴¹⁹	P	P	P	P	P

¹ Refer to Subsection XI-10-4.03(A) and (B), Residential Zone Special Uses, of this Chapter, for standards.

² ~~Refer to Subsection XI-10-4.03(B), Residential Zone Special Uses, of this Chapter, for standards.~~

² When located on the ground floor, retail sales of products related to the personal services provided shall be offered at the front of the premises near the pedestrian entrance and shall comprise at least 10 percent of the floor area of the business establishment.

³ Licensed nursing home serving more than six persons, except when used primarily for contagious sickness, mental or drug alcohol addict cases.

⁴ Refer to Subsection XI-10-13.07, Manufactured Homes, of this Chapter, for standards.

⁵ Refer to Subsection XI-10-54.07, Planned Unit Developments, of this Title, for standards.

⁶ In conjunction with existing or proposed legal single-family, duplex, or multi-family dwellings. Refer to Subsection XI-10-13.08, Accessory Dwelling Units, of this Chapter, for standards.

⁷ Refer to XI-10-13.13, Special Uses, Single Room Occupancy Residences, of this Chapter.

⁸ Permitted only in single family dwellings.

⁹ Permitted only in multi-family dwellings.

¹⁰ May be permitted with approval of a Conditional Use Permit for kitchens associated with a civic or community organization, such as a church or social club.

¹¹ Refer to Subsection XI-10-13.18, Mobile Food Vending, of this Chapter.

¹² Mobile food vending in the R1, R2, and R3 zones may be permitted in the public right-of-way as part of an approved special event. See Subsection XI-10-13.18(C)(3)(a)(i). Mobile food vending in the R4 and R5 zones is permitted in the public right-of-way upon issuance of all required City and County permits (see Subsection XI-10-13.18(H)).

¹³ In all residential zones, mobile food vending on private property may be permitted on a parcel having a current certificate of use and occupancy as a museum, hospital, school, or place of religious assembly and worship, provided that the mobile food vending use shall not operate more frequently than once per week and for no longer than three consecutive days.

¹⁴ In the R1, R2, and R3 residential zones, mobile food vending shall not be permitted on a private property having a residential use. and R5 residential zones, mobile food vending on private property having residential use may be permitted as part of an approved, one-time or recurring special event. See Subsection XI-10-13.18(C)(3)(a)(i).

⁴⁰¹⁵ Except for the raising of animals or fowl for commercial purposes, or the sale of any products at retail on the premises.

⁴⁴¹⁶ Except for driving tee or range, miniature course and similar uses operated for commercial purposes.

⁴²¹⁷ Allowed commercial uses to be specified through the Conditional Use Permit process.

⁴³¹⁸ Refer to Subsection XI-10-13.11(E), Model Home Complexes and Sales Offices, of this Chapter for temporary tract offices.

⁴⁴¹⁹ Subject to the requirements of Subsection XI-10-13.16, Short-Term Rentals, of this Chapter.

XI-10-4.03 Residential Zone Special Uses

- A. Incidental Services Within R3 Zones. Incidental services such as restaurants and retail sales to serve residents may be allowed through the approval of a Conditional Use Permit in accordance with the provisions in Section XI-10-57.04, of this chapter, provided there is no exterior display or advertising and such activities are conducted in spaces which are integral parts of a main building.
- B. ~~Commercial~~Personal Services, Retail and Offices within R4 and R5 Zones. ~~Commercial~~Personal services, retail and offices may be permitted provided they are:
1. Less than or equal to ten thousand (10,000) square feet in gross floor area;
 2. Not open past 10:00 p.m.;
 3. Not specifically noted in Table XI-10-4.02-1, Residential Zone Uses, of this Chapter, requiring Conditional Use Permit approval or listed as a prohibited use; and
 4. Not listed as a prohibited use in Section XI-10-4.02(B), Prohibited Uses, of this Chapter.

If items 1 through 2, above, are not met, then approval of a Conditional Use Permit is required in accordance with Section XI-10-57.04, of this Chapter.

C. Affordable Housing. Affordable housing units should be provided in all new housing projects. While twenty percent (20%) is the minimum goal, affordable unit requirements will be determined on a project by project basis, taking into consideration the size and location of the project, the type of housing unit, proximity to transit and the mix of affordable units in the vicinity.

SECTION 6. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 5

Title XI, Chapter 10, Subsection 5.02 ("Commercial Use Table") of the Milpitas Municipal Code is hereby amended to read as follows:

**Table XI-10-5.02-1
Commercial Zone Uses**

Use	CO	C1	C2	HS	TC
1. Commercial Uses					
Alcoholic beverage sales	C ⁶¹	C	C	NP	C
Art/photography studio or gallery	NP	P	P	P	P
Bookstore	NP	P	P	P	P

<u>Business support services</u>	<u>NP²</u>	<u>NP²</u>	<u>P</u>	<u>P</u>	<u>N</u>
<u>Commercial services⁴</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>NP</u>	<u>P</u>
<u>Check cashing and payday loan businesses</u>	<u>NP</u>	<u>NP</u>	<u>C</u>	<u>C</u>	<u>MC</u>
Funeral home or mortician	NP	NP	C	C	NP
Furniture sales	NP	P	P	P	P
<u>Furniture repair and reupholstering</u>	<u>NP</u>	<u>NP</u>	<u>P</u>	<u>P</u>	<u>NP</u>
Grocery store (supermarkets)					
Within 1,000 ft. of residential zone	NP	C	C	C	C
Not within 1,000 ft. of residential zone	NP	P	P	P	P
Head/smoke/tobacco shop	NP	C	C	NP	C
Home improvement (hardware, blinds, interior decorating, etc.)	NP	P	P	C	P
Not fully enclosed operation	NP	C	C	C	C
Household appliance store	NP	NP	P	P	NP
Small appliance repair	NP	NP	MCS	P	NP
Large appliance repair	NP	NP	NP	P	NP
<u>Janitorial services</u>	<u>NP</u>	<u>NP</u>	<u>P</u>	<u>P</u>	<u>NP</u>
Newsstand					
Indoor	P	P	P	NP	P
Outdoor	C	C	C	NP	C
Nursery (flower or plant)					
Indoor	NP	NP	P ²³	P	P
Outdoor	NP	NP	C	P	NP
<u>Office supply sales (stationery, equipment)</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
Paint and wallpaper stores	NP	NP	P	P	P
Pawnshops	NP	NP	C	NP	NP
<u>Personal services⁴</u>	<u>NP</u>	<u>P</u>	<u>P</u>	<u>NP</u>	<u>P</u>
Pet stores	NP	NP	P	P	P
Printing (newspaper, publishing)	NP	NP	P	P	P
Rentals (medical supplies, costumes, party equipment, office equipment)	NP	NP	P	P	P
<u>Repair and cleaning, small items</u>	<u>NP</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
Retail stores, general merchandise	NP	P	P	NP	P
<u>Tanning salon</u>	<u>NP</u>	<u>NP</u>	<u>P</u>	<u>NP</u>	<u>P</u>
Thrift store ³⁵	NP	C	P	P	P
2. Entertainment and Recreation					
Adult business ⁴⁶	NP	NP	NP	P	NP
Bowling alley	NP	NP	P	P	P
Commercial athletic facilities					
Indoor	NP	C	P	P	P
Outdoor	NP	NP	NP	C	NP
Motion picture theater (See 7 below)					
Recreation or entertainment facility	NP	C	C	C	C
Shooting range, indoor	NP	NP	NP	C	NP
3. Health and Veterinarian Uses					
Animal grooming (no boarding)	NP	P	P	P	P
Hospital	C	NP	C	C	C

Kennel	NP	NP	C	NP	N
Massage establishment ⁷⁴⁵	NP	NP	MC	MC	MC
Massage establishment, accessory ⁷⁴⁵	NP	NP	MCS	MCS	MCS
Medical and dental office	P	P	P	NP	P
Medical and dental clinic	P	C	C	NP	P
Medical support laboratories	P	C	C	C	C
Optician and optometrist shop	P	P	P	NP	P
Pharmacy or drug store	NP	P	P	P	P
Sauna and steam bath	NP	NP	NP	P	NP
Veterinary clinic	NP	NP	P	P	P
4. Industrial Uses ⁵⁸					
Assembly from pre-processed materials	NP	NP	C	NP	NP
Commercial fueling facility	NP	NP	NP	C	NP
Commercial laboratory	NP	NP	C	P	NP
Contractor's yards and offices	NP	NP	C	C	NP
Disinfection and extermination business	NP	NP	C	P	NP
Dry cleaning plant	NP	NP	NP	P	NP
Food storage locker	NP	NP	NP	P	NP
Landscape contractor	NP	NP	C	P	NP
Lumberyards	NP	NP	C	C	NP
Mini-storage complex	NP	NP	C	C	NP
Plumbing, metalworking, glassworking or woodworking	NP	NP	C	C	NP
Research & development	NP	NP	C	NP	NP
Sign sales and fabrication (Electric and neon sign, sign painting)	NP	NP	C	P	NP
Warehousing and wholesale	NP	NP	C	NP	NP
5. Lodging					
Hotel and motel	NP	NP	C	C	C
6. Professional Offices, Financial Institutions and Related Uses					
Automatic teller machines (freestanding) ⁶⁹	NP	P	P	P	P
Financial institutions (banks, savings and loans, etc.)	P	P	P	P	P
General offices (administrative and business services, real estate, travel agencies, etc.) <u>Offices, business and professional</u>	P	P	P	P	P
7. Public, Quasi-Public and Assembly Uses					
Auction hall	NP	NP	C	C	C
Child-care					
Child-care center	C	C	C	C	C
Day care school	C	C	C	C	C
Large family child-care home	NP	NP	NP	NP	C
Small family child-care home	NP	NP	NP	NP	C
Places of assembly	C	C	C	C	C
Cultural center	NP	NP	C	C	C
Educational institutions					
Schools, private (elementary, middle, high)	NP	NP	C	NP	C

Trade and vocational school	C	NP	P	P	C
Farmer's market (not including flea market)	NP	C	C	C	C
Instruction					
Group	MCS	MCS	MCS	MCS	MCS
Private	P	P	P	P	P
Motion picture theater					
Indoor	NP	C	C	C	C
Outdoor	NP	NP	NP	C	NP
Parking facility, storage garage	NP	P	P	C	C
Public utilities	C	C	C	C	C
Transportation facility (taxi, limousine, etc.)	NP	NP	C	C	C
8. Restaurants or Food Service					
Banquet hall	NP	NP	C	C	C
Bar or nightclub	NP	NP	C ⁴⁷¹⁰	C	C ⁴⁷¹⁰
Catering establishment	C	NP	P	P	P
Restaurants	C ⁷¹	P	P	P	P
With music (indoor/outdoor)	NP	P ⁴⁷¹⁰	P ⁴⁷¹⁰	C	P ⁴⁷¹⁰
With other live entertainment/dancing	NP	NP	C	C	C
With drive-in or drive-through	NP	C	C	C	C
With ancillary on-premise beer & wine with no separate bar	NP	MC	PMC	MC	MC
Mobile Food Vending (individual vehicle) ⁴⁶¹¹	P	P	P	P	P
Mobile Food Park ⁴⁶¹¹	MC	MC	MC	MC	MC
Commissary	MC	P	P	P	MC
9. Residential Uses					
Caretaker (in conjunction with contractor's yard or mini-storage complex)	NP	NP	C	C	NP
Emergency shelters ⁹¹²	NP	NP	NP	P/C	NP
Single-room occupancy residences ⁴⁰¹³	NP	NP	NP	C	NP
10. Vehicle Related Uses					
Auto repair (tire, oil change, smog check, etc.)	NP	NP	C	C	NP
Auto sales and rental, outdoor (new and used cars, RV and truck)	NP	NP	C	C	NP
Auto broker (wholesale, no vehicles on site)	MCS	MCS	MCS	MCS	MCS
Car wash	NP	NP	C	C	NP
Service stations (with or without repair or retail) ⁴⁴¹⁴	C	C	C	C	C
Drive through uses (restaurants, pharmacies, etc.)	NP	C	C	C	C
11. Unclassified Uses					
Accessory structures ⁴²¹⁵	P	P	P	P	P
Model home complex ⁴³¹⁶	NP	NP	NP	NP	P
Mortuary or crematory	NP	NP	NP	C	NP
Radio or television station	NP	NP	C	P	NP
Temporary seasonal sales ⁴⁴¹⁷	NP	P	P	P	P

⁷¹ When intended to serve the occupants and patrons of the permitted use (office, etc.) and conducted and entered from within the building and provided there is no exterior display of advertising.

- ⁴² ~~Refer to the definition for "Commercial Services" in Section 2, Definitions, of this Chapter. Copy/quick-printing shops and mailbox facilities shall be permitted in the CO, C1, and TC zones. All other uses classified as Business Support Services shall not be permitted in these zones.~~
- ³ ~~Provided that all incidental equipment and supplies, including fertilizer and empty cans, are kept within a building.~~
- ⁴ ~~When located on the ground floor, retail sales of products related to the Personal Services provided shall be offered at the front of the premises near the pedestrian entrance and shall comprise at least 10 percent of the floor area of the business establishment.~~
- ⁵ ~~Refer to XI-10-5.04, Commercial Zone Special Development Standards, of this Chapter.~~
- ⁶ ~~In accordance with the Title III, Chapter 4, Adult Business Ordinance, and Subsection 13.04, Adult Businesses, of this Chapter.~~
- ⁷ ~~Massage establishments are subject to Title III, Chapter 6 of the Milpitas Municipal Code and Subsection XI-10-13.16 of this title. Refer to Subsection XI-10-13.16, of this Title, for special provisions for massage establishments.~~
- ⁸ ~~For conditionally permitted uses, refer to Subsection 57.04(C) (9), Certain Industrial Uses within Commercial Districts, of this Chapter.~~
- ⁹ ~~Refer to Subsection 57.03, Site Development Permits and Minor Site Development Permits, of this Chapter.~~
- ¹⁰ ~~Indoor or outdoor music is permitted as an accessory use on the same parcel in conjunction with a restaurant or bar that is a principal permitted use or approved conditional use in the C1, C2, and TC zones. See also Subsection XI-10-5.04(E) for additional regulations.~~
- ¹¹ ~~Refer to Subsection XI-10-13.18, Mobile Food Vending, of this Chapter.~~
- ¹² ~~Refer to XI-10-13.14, Special Uses, Emergency Shelters, of this Chapter.~~
- ¹³ ~~Refer to XI-10-13.13, Special Uses, Single Room Occupancy Residences, of this Chapter.~~
- ¹⁴ ~~Refer to Subsection XI-10-6.02-2, Special Uses, of this Chapter, for standards. Service stations shall follow the "General development policy: Gasoline service stations, and automotive service centers" adopted by the City Council on December 19, 1995.~~
- ¹⁵ ~~Not including warehouses on the same site as the permitted use.~~
- ¹⁶ ~~No tract sign shall be permitted within 600 feet of a Santa Clara County Expressway.~~
- ¹⁷ ~~Refer to Section 13.11, Temporary Uses and Structures, of this Chapter.~~
- ² ~~Provided that all incidental equipment and supplies, including fertilizer and empty cans, are kept within a building.~~
- ³ ~~Refer to XI-10-5.04, Commercial Zone Special Development Standards, of this Chapter.~~
- ⁴ ~~In accordance with the Title III, Chapter 4, Adult Business Ordinance, and Subsection 13.04, Adult Businesses, of this Chapter.~~
- ⁵ ~~For conditionally permitted uses, refer to Subsection 57.04(C) (9), Certain Industrial Uses within Commercial Districts, of this Chapter.~~
- ⁶ ~~Refer to Subsection 57.03, Site Development Permits and Minor Site Development Permits, of this Chapter.~~
- ⁷ ~~When intended to serve the occupants and patrons of the permitted use (office, etc.) and conducted and entered from within the building and provided there is no exterior display of advertising.~~
- ⁸ ~~Refer to Subsection 5.02-1, Commercial Zone Special Uses, of this Section.~~
- ⁹ ~~Refer to XI-10-13.14, Special Uses, Emergency Shelters, of this Chapter.~~
- ¹⁰ ~~Refer to XI-10-13.13, Special Uses, Single Room Occupancy Residences, of this Chapter.~~
- ¹¹ ~~Refer to Subsection XI-10-6.02-2, Special Uses, of this Chapter, for standards. Service stations shall follow the "General development policy: Gasoline service stations, and automotive service centers" adopted by the City Council on December 19, 1995.~~
- ¹² ~~Not including warehouses on the same site as the permitted use.~~
- ¹³ ~~No tract sign shall be permitted within 600 feet of a Santa Clara County Expressway.~~
- ¹⁴ ~~Refer to Section 13.11, Temporary Uses and Structures, of this Chapter.~~
- ¹⁵ ~~Massage establishments are subject to Title III, Chapter 6 of the Milpitas Municipal Code and Subsection XI-10-13.16 of this title. Refer to Subsection XI-10-13.16, of this Title, for special provisions for massage establishments.~~
- ¹⁶ ~~Refer to Subsection XI-10-13.18, Mobile Food Vending, of this Chapter.~~

SECTION 7. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 6

Title XI, Chapter 10, Subsections 6.02 (“Mixed-Use Use Table”) and 6.02-1 (“Mixed-Use Zone Specific Uses”) of the Milpitas Municipal Code are hereby amended to read as follows:

**Table XI-10-6.02-1
Mixed Use Zone Uses**

Use	MXD	MXD2		MXD3
		Ground Level (Facing Retail street)	Upper Floor	
1. Commercial Uses				
Alcohol beverage sales	C	C	C	C
<u>Business support services¹</u>	<u>P</u>	<u>NP²</u>	<u>NP</u>	<u>NP²</u>
Commercial services⁴	MCS	MCS	MCS	MCS
Grocery stores (supermarkets)	C	C	C	C
Pawnshops ²³	C	C	C	C
<u>Personal services^{1, 4}</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
Pet shops	C	NP	NP	NP
<u>Repair and cleaning shop, small items¹</u>	<u>P</u>	<u>MC</u>	<u>MC</u>	<u>MC</u>
Retail stores, general merchandise ³⁵	MCSP	MCSP	MCS	MCS
Tanning salons	P	P	P	P
Thrift shops (used merchandise)				
Retail	P	P	P	P
With collections	C	C	C	C
2. Entertainment and Recreation				
Commercial athletic facilities	P	P	P	P
Motion picture theater (see 6 below)				
Recreation or entertainment facility	C	C	C	C
3. Health and Veterinarian Uses				
Animal grooming (no boarding)	P	P	NP	P
Hospitals or sanitariums ⁴⁶	C	C	C	C
Massage establishment ⁴⁷²	MC	MC	MC	MC
Massage establishment, accessory ⁴⁷²	MCS	MCS	MCS	MCS
Medical or dental offices and clinics	P	NP	P	P
Medical support laboratories	P	P	P	P
Optician and optometrist shop	P	P	P	P
Pharmacy or drug store	P	P	P	P
Veterinarian clinic	P	P	P	P
4. Lodging				
Bed and breakfast	P	P	NP	NP
Boarding houses (3 or more persons)	C	C	C	C
Group dwellings	C	C	C	C
Hotels	C	P	P	P
Motels	C	C	C	C
5. Professional Offices, Financial Institutions and Related Uses ⁴				
Financial institutions (banks, savings and loans, etc.)	MCS	NP	MCS	P
Offices, <u>business and professional</u> ³⁵	MCS	NP	MCS	P

6. Public/Quasi Public and Assembly Uses

Child care				
Child care center	C	P	C	P
Day care school	C	C	C	
Large family child care home	P	P	C	P
Small family child care home	P	P	P	P
Instruction				
Group ¹³⁵	P	NP	NP	NP
Private	P	P	P	P
Park, playground or community center ⁵⁸	O	O	O	O
Places of assembly ⁴⁶	C	C	C	C
Public utilities	C	C	C	C
Schools, private (elementary, middle and high) ⁴	C	C	C	C
Theaters (Indoor)	C	C	C	C
Trade and vocational schools ⁴⁶	C	C	C	C
Transportation facilities ²³	C	C	C	C

7. Residential Uses

Multi-family housing ⁷⁹	P	NP ¹⁰	P	P
Transitional and supportive housing ⁷⁹	P	NP ¹⁰	P	P
Accessory Dwelling Unit ¹⁹¹¹	P	NP	P	P

8. Restaurants or Food Service

Bar or nightclub	C ¹⁰¹²	C ¹⁰¹²	C	C ¹⁰¹²
Brewery/Eateries	MCS	MCS	NP	MCS
Catering establishments	C	C	C	C
Restaurants ²³	P/C	P/C	NP	P/C
With music (indoor/outdoor)	P ¹⁰¹²	P ¹⁰¹²	NP	P ¹⁰¹²
With other live entertainment/dancing	C	C	NP	C
With ancillary on-premise beer & wine with no separate bar	P	P	P	P
Mobile Food Vending (individual vehicle) ²⁰¹³	P	P	NP	P
Mobile Food Park ²⁰¹³	MC	NP	NP	MC
Commissary	MC	NP	NP	MC

9. Unclassified Uses

Artisan Studios & Live-work units, woodworking or glassworking, plumbing or metalworking and sign shops ²³	MCS	MCS	MCS	MCS
Lobbies and entries for upper floor uses	P	P	NP	P
Model home complex ¹¹¹⁴	P	P	P	P
Mixed use developments ¹²¹⁵	P	P	P	P
Planned Unit Development ¹³¹⁶	P	P	P	P
Temporary seasonal sales ¹⁴¹⁷	P	P	P	P
Short-Term Rentals ¹⁸	P	NP	P	P

10. Vehicle-Related Repair, Sales and Services

Auto sales and rental ¹⁵¹⁹	C	C	C	C
Auto broker (wholesale, no vehicles on site) ²³	MCS	MCS	MCS	MCS
Vehicle service uses ¹⁶²⁰	C	NP	NP	C

¹ Refer to Subsection XI-10-6.02-1(B), Performance standards for certain uses, of this Chapter, for standards.

² Copy/quick-printing shops and mailbox rental facilities shall be permitted in the MXD, MXD2 (Ground Floor), and MXD3 zones. All other uses classified as Business Support Services shall not be permitted in these zones.

²³ Refer to Subsection XI-10-6.02-1, Special Uses, of this Chapter, for standards.

⁴ When located on the ground floor, retail sales of products related to the Personal Services provided shall be offered at the front of the premises near the pedestrian entrance and shall comprise at least 10 percent of the floor area of the business establishment.

³⁵ Refer to Subsection XI-10-6.02-1(B) Performance standards for certain uses, of this Chapter.

⁴⁶ Refer to Subsection XI-10-6.02-2, Quasi-Public Uses, of this Chapter, for standards.

⁴⁷ Massage establishments are subject to Title III, Chapter 6 of the Milpitas Municipal Code and Subsection XI-10-13.16 of this title. Refer to Subsection XI-10-13.16, of this Title, for special provisions for massage establishments.

⁵⁸ For parks, playgrounds or community center owned and operated by a government agency or a nonprofit community organization.

⁷⁹ Ground level residential is prohibited in the Ground Level Commercial Area as shown on the Midtown Specific Plan Land Use Map, Figure 3.1.

⁹¹⁰ Uses serving upper-floor residential uses, such as common gathering space, lobby, and resident services, may be allowed as ground floor uses where residential uses would otherwise not be permitted.

⁴⁹¹¹ Only allowed within multi-family dwellings, subject to the requirements of Subsection XI-10-13.08, Accessory Dwelling Units, of this Chapter.

⁴⁰¹² Indoor or outdoor music is permitted as an accessory use on the same parcel in conjunction with a restaurant or bar that is a principal permitted use or approved conditional use in the MXD, MXD2, and MXD3 zones. See also Subsection XI-10-6.06(B) for additional regulations.

²⁰¹³ Refer to Subsection XI-10-13.18, Mobile Food Vending, of this Chapter.

⁴⁴¹⁴ Refer to Subsection XI-10-13.11(E), Model Home Complexes and Sales Offices, of this Chapter for temporary tract offices.

⁴²¹⁵ Which include only permitted uses.

⁴³¹⁶ Refer to Section XI-10-54.07, Planned Unit Developments, of this Chapter, for standards.

⁴⁴¹⁷ Refer to Section XI-10-13.11(D), Temporary Seasonal Sales, of this Chapter.

¹⁸ Only allowed within a dwelling unit, subject to the requirements of Subsection XI-10-13.17, Short-Term Rentals, of this Chapter.

⁴⁵¹⁹ New and used auto, recreational vehicle and boat sales, excluding commercial vehicles, trucks, buses, vans, and farm equipment, with accessory repairs and services, only allowed if fully enclosed within a building. Bicycle and auto rental agency, excluding commercial vehicles, trucks, buses, vans, boats and RV rentals, only if fully enclosed within a building.

⁴⁶²⁰ Refer to Subsection XI-10-6.02-2, Special Uses, of this Chapter, for standards. Service stations shall follow the "General development policy: Gasoline service stations, and automotive service centers" adopted by the City Council on December 19, 1995.

⁶ Refer to XI 10 13.14, Special Uses, Emergency Shelters, of this Chapter.

⁷ Ground level residential is prohibited in the Ground Level Commercial Area as shown on the Midtown Specific Plan Land Use Map, Figure 3.1.

⁸ Refer to XI 10 13.13, Special Uses, Single Room Occupancy Residences, of this Chapter.

¹¹ Refer to Subsection XI 10 13.11(E), Model Home Complexes and Sales Offices, of this Chapter for temporary tract offices.

¹² Which include only permitted uses.

¹³ Refer to Section XI 10 54.07, Planned Unit Developments, of this Chapter, for standards.

¹⁴ Refer to Section XI 10 13.11(D), Temporary Seasonal Sales, of this Chapter.

¹⁵ New and used auto, recreational vehicle and boat sales, excluding commercial vehicles, trucks, buses, vans, and farm equipment, with accessory repairs and services, only allowed if fully enclosed within a building. Bicycle and auto rental agency, excluding commercial vehicles, trucks, buses, vans, boats and RV rentals, only if fully enclosed within a building.

¹⁶ Refer to Subsection XI 10 6.02 2, Special Uses, of this Chapter, for standards. Service stations shall follow the "General development policy: Gasoline service stations, and automotive service centers" adopted by the City Council on December 19, 1995.

¹⁷ Massage establishments are subject to Title III, Chapter 6 of the Milpitas Municipal Code and Subsection XI 10 13.16 of this title. Refer to Subsection XI 10 13.16, of this Title, for special provisions for massage establishments.

¹⁸ Only allowed within a dwelling unit, subject to the requirements of Subsection XI 10 13.17, Short Term Rentals, of this Chapter.

¹⁹Only allowed within multi-family dwellings, subject to the requirements of Subsection XI-10-13.08, Accessory Dwelling Units, of Chapter.

²⁰Refer to Subsection XI-10-13.18, Mobile Food Vending, of this Chapter.

6.02-1 Mixed Use Zone Special Uses

- A. Special Uses within all MXD zones. Certain uses noted in Table 6.02-1, Mixed Use Zone Uses may be allowed through the approval of a Conditional Use Permit and Minor Conditional Use Permits, in accordance with Subsection 57.04, Conditional Use Permits, of this Chapter, if they are not located within one thousand (1,000) feet of another same use listed below. This distance shall be measured from the property line of the parcel where such use is located.
1. Auto service uses, including but not limited to: gasoline service stations, car washes, tire shops, towing without vehicle storage and auto repair shops of all kinds, radiators, paint, body, glass, brakes, upholstery, and other similar types.
 2. Local transportation service facilities (e.g. taxi, parcel service, ambulance, armored car, and van storage) without outdoor storage of vehicles.
 3. Pawnshops.
- B. Performance Standards for Certain Uses. For uses requiring approval of a Minor Conditional Use Permit by staff, in accordance with Section XI-10-57.04, Conditional Use Permits and Minor Conditional Use Permits, of this Chapter, the following performance standards below shall be met.
1. Auto Brokers. Auto Brokers may be permitted by right if the following standards are met:
 - a. Local Sales and Use Tax. In order to assist the City of Milpitas in its efforts to receive direct distribution of the local tax on materials associated with the project, the California Sales and Use Tax (the "Local Tax") shall be allocated to the project site, to the extent reasonably possible. Evidence of tax allocation or cause as to why such allocation cannot be made shall be submitted at the time of business license submittal.
 2. Auto Service Uses. Auto Service uses shall comply with the following standards:
 - a. All operations shall be conducted completely within an enclosed building.
 - b. Entrances to the service bays shall not be open to the street but shall be designed to face the rear or interior side property line.
 3. Artisans, Plumbing, Metalworking, Sign Shops and Woodworking or glass working shops. These uses shall comply with the following standards:
 - a. All operations shall be conducted completely within an enclosed building.
 - b. There shall be no dust, fume, or odor either emitted from the premise.
 - c. The operations shall not create excessive vibrations.
 - d. The operations shall be consistent with the City's noise standards.

- e. Plumbing, metalworking, sign shops, woodworking or glass working shops shall not than 1,000 feet of another same use measured from the property line.
- 4. ~~Commercial~~Personal Services, Business Support Services, and Repair and Cleaning-Small Items uses shall comply with the following:
 - a. When located within the MXD zone:
 - i. Located in the area designated for ground floor retail and are less than or equal to ten thousand (10,000) square feet in gross floor area;
 - ii. Located in the areas not designated for ground floor retail and are less than or equal to fifty thousand (50,000) square feet in gross floor area.
 - b. When located within the MXD2 and MXD3 zones they are less than or equal to fifty thousand (50,000) square feet in gross floor area;
 - c. They are not open past 10:00 p.m.;
 - d. They are not specifically noted in Table 6.02-1, Mixed Use Zone Uses, of this chapter, requiring Conditional Use Permit approval or listed as a prohibited use;
 - e. They are not listed as a prohibited use in Section 10-6.02 (B), Prohibited Uses, of this Chapter.

If items a through c above are not met, then approval of a Minor Conditional Use Permit is required in accordance with Subsection 57.04, Conditional Use Permits and Minor Conditional Use Permits, of this Chapter. Exceptions to the requirement for a Conditional Use Permit for such uses may be granted at the discretion of the Planning Director on a case-by-case basis, based upon a review of site-specific conditions.

- 5. Group Instruction uses shall comply with the following standards:
 - a. No loitering shall be permitted before or after any classes or sessions.
- 6. Restaurants may be permitted provided:
 - a. They have only ancillary on-premise consumption of beer and wine associated with food sales;
 - b. They have no separate bar area;
 - c. When located within the MXD2 and MXD3 zones they are located on the ground floor facing a public street designated as a retail mixed use street; and
 - d. They conform to the performance standards listed in this subsection (~~f~~e) below.

If items (a) through (~~d~~c) above are not met, then approval of a Conditional Use Permit is required in accordance with Section 57, of this Chapter.

- e. Restaurant Performance Standards. Restaurants shall comply with the following performance standards:

- i. Seating shall not exceed that which the amount of parking allocated for the restaurant space would allow. A sign measuring at least one (1) foot by one (1) foot, with a lettering height of at least three (3) inches, shall be placed in a conspicuous location near the restaurant front entrance stating the maximum total seating allowed. Outdoor seating is allowed if it has been approved as part of the facility's Minor Site Development Permit or Site Development Permit and is operated in conformance with any conditions of that approval.
 - ii. The restaurant shall comply with the City Council's Guidelines for Recycling Enclosures (Resolution No. 6296).
 - iii. The restaurant shall incorporate measures to reduce odors to acceptable levels, including, but not limited to, installation of a scrubber, carbon filter or similar equipment, on the roof vent to control odors.
 - iv. All the facility's floor drains, trash compactors and indoor mat and equipment washing areas shall be drained to the sanitary sewer.
 - v. Where applicable, the restaurant shall maintain an active account with a tallow hauling company.
 - vi. The restaurant shall prepare and implement a program assigning restaurant staff responsibility for complying with the following guidelines which shall be adhered to while the restaurant is in operation:
 - 1) Wash all containers and equipment in the kitchen areas so that wash water may drain into the sanitary sewer.
 - 2) Keep garbage dumpsters clean inside and out; replace very dirty dumpsters with new, clean ones.
 - 3) Double bag waste to prevent leaking.
 - 4) Place, do not drop or throw, waste-filled bags, to prevent leaking.
 - 5) Keep the ground under and around the garbage dumpsters swept.
 - 6) Sprinkle the ground lightly after sweeping with a mixture of water and a little bleach.
 - 7) Hold training sessions to instruct employees on the proper procedures in the handling and disposal of food items; the general maintenance and use of the compactor and any other procedures that would assist the business in complying with all State and local health and sanitation standards. A record of such training must be kept to verify compliance with this requirement.
 - 8) Post signs (in English and multi-lingual) inside the premises for all employees identifying procedures for food delivery and garbage disposal.
 - 9) All garbage bins shall be stored in the garbage enclosure except for the twelve (12) hours immediately before and after garbage collection.
7. Retail and Offices shall comply with the following:
- a. When located within the MXD zone:

- i. Located in the area designated for ground floor retail and are less than or equal thousand (10,000) square feet in gross floor area;
- ii. Located in the areas not designated for ground floor retail and are less than or equal to fifty thousand (50,000) square feet in gross floor area.
- b. When located within the MXD2 and MXD3 zones they are less than or equal to fifty thousand (50,000) square feet in gross floor area;
- c. They are not open past 10:00 p.m.;
- d. They are not specifically noted in Table 6.02-1, Mixed Use Zone Uses, of this Chapter, requiring Conditional Use Permit approval or listed as a prohibited use; and
- e. They are not listed as a prohibited use in Section 10-6.02 (B), Prohibited Uses, of this Chapter.

If items a through c above are not met, then approval of a Conditional Use Permit is required in accordance with Section 57, Conditional Use Permits and Minor Conditional Use Permits, of this Chapter.

6.02-2 Quasi-Public Uses within MXD Zone

- A. The following quasi-public uses may be permitted within the MXD zones provided their location is first approved by the Planning Commission, in accordance with Subsection 57.04, Conditional Use Permits and Minor Conditional Use Permits, of this Chapter, and they are not located within 1,000 feet of the parcel boundary of another quasi-public use listed below. This distance shall be measured from the property line of the parcel where such use is located.
- 1. Places of meeting or assembly, such as auditoriums, banquet halls, and fraternal or union halls. Churches and religious institutions are exempt from this spatial requirement.
 - 2. Hospitals or sanitariums.
 - 3. Private elementary, middle or high schools.
 - 4. Vocational schools, if not found objectionable due to noise, odor, vibration or other similar health, safety and welfare basis.

SECTION 8. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 7

Title XI, Chapter 10, Subsection 7.02 ("Industrial Use Table") of the Milpitas Municipal Code is hereby amended to read as follows:

**Table XI-10-7.02-1
Industrial Zone Uses**

Use	M1	M2	MP
1. Commercial Uses			
Adult Businesses ¹	P	NP	NP
Business support services	P	NP	P
Commercial services	P	NP	P

<u>Furniture repair and reupholstery</u>	<u>P</u>	<u>NP</u>	<u>P</u>
<u>Janitorial services</u>	<u>P</u>	<u>NP</u>	<u>P</u>
<u>Office supplies</u>	<u>C</u>	<u>NP</u>	<u>C</u>
<u>Personal services</u>	<u>C</u>	<u>NP</u>	<u>C</u>
Printing (newspaper, blueprint, publishing)	P	NP	C
<u>Repair and cleaning, small items</u>	<u>P</u>	<u>NP</u>	<u>NP</u>
Retail stores, general merchandise ²	C	NP	C
2. Entertainment and Recreation Uses			
Billiards	C	NP	C
Commercial athletic facilities	C	NP	C
3. Health and Veterinarian Uses			
Hospitals	NP	NP	C
Kennel	P	NP	NP
Medical support laboratories	P	NP	P
Medical and dental offices and clinics ²	P	NP	P
Veterinarian hospital	P	NP	P
4. Industrial Uses			
Assembly from pre-processed materials ³	P	P	P
Auto assembly facility	NP	P	NP
Bottling facility	P	P	NP
Building material sales (equipment rental) ⁴	NP	C	NP
Commercial fueling facility	C	C	NP
Commercial laboratory	P	P	P
Contractor's yard and offices ⁴	NP	C	NP
Distribution facility	P	P	P
<u>Dry-cleaning plant</u>	<u>P</u>	<u>P</u>	<u>NP</u>
<u>Film processing, photo finishing and printing, etching, lithography, printmaking, and other similar creative industries</u>	<u>P</u>	<u>MCS</u>	<u>P</u>
Freight and trucking yard ⁴	NP	P	NP
Mini-storage complex	C	C	NP
Plumbing, metalworking, glassworking or woodworking	P	P	NP
Plant or facility (research & development, assembly, manufacturing, packaging, processing, repairing, etc. or materials, merchandise or products)	P	P	P
Pottery or tile manufacturing	P	P	NP
Recycling processing facility	C	C	NP
<u>Soils and materials testing laboratories</u>	<u>P</u>	<u>P</u>	<u>P</u>
Warehousing and wholesale	P	P	P
5. Lodging Uses			
Hotels/motels	C	NP	C
6. Professional Office Uses			
<u>Administrative, professional or research Offices, business and professional</u>	P	NP	P
Financial institutions (banks, savings and loans, etc.)	C	NP	P
7. Public, Quasi-Public and Assembly Uses			
Auditorium ⁵	NP	NP	C
Conference center ⁵	NP	NP	C

Vocational school	C	NP	C
Farmer's market (not including flea market) ⁶	NP	NP	C
Public utilities ⁷	P	P	P
Transportation facility (taxi, parcel service, armored car, etc.) ⁴	NP	P	NP
Temporary Public Safety Uses ⁸	C	C	C
Places of assembly ¹²⁹	C	NP	C
8. Residential Uses			
Caretaker's residence	C	C	NP
9. Restaurants or Food Service Uses			
Catering establishment	P	NP	P
Restaurants			
With on-site service of alcohol	C	NP	C
Without on-site service of alcohol	C	NP	C
With live entertainment/dancing	NP	NP	NP
Drive-in or drive-thru	C	NP	C
Mobile Food Vending (individual vehicle) ¹³¹⁰	P	P	P
Mobile Food Park	NP	NP	NP
Commissary	P	NP	P
10. Vehicle Related Uses			
Auto junk yard ⁴	NP	C	NP
Auto repair (tire, oil change, smog check, etc.) ⁹¹¹	C	P	C ⁴⁰¹²
Service stations (with or without repair or retail) ⁹¹¹	C	C	C
With car wash	NP	C	C
Vehicle sales and rental (auto, RV and truck-new and used in operable condition) ¹⁴¹³	C	C	C ⁴⁰¹²
Auto broker (wholesale, no vehicles on site) ¹²⁹	MCS	MCS	MCS

¹ In accordance with the Title III, Chapter 4, Adult Business Ordinance and Subsection XI-10-13.04, Adult Businesses, of this Chapter.

² When found necessary to serve and appropriate to the industrial area.

³ Assembling, packaging, or distribution from previously prepared materials, such as cloth, plastic, paper, leather, precious or semi-precious metals or stones, electric or electronic instruments and devices such as television, radios, and pharmaceutical products.

⁴ When conducted wholly within a completely enclosed building or within an area enclosed on all sides with a solid wall or fence (e.g. chain link with slats) not less than eight feet in height.

⁵ Shall be ancillary to the primary use or associated with business or industrial uses.

⁶ Refer to Subsection XI-10-13.10, Farmers Markets, of this Chapter.

⁷ Includes service facilities, electric transmission and distribution substations and public utility service centers.

⁸ See Subsection XI-10-13.11(I), Temporary Public Safety Uses.

¹²⁹ See Subsection XI-10-7.04(A)(1), Industrial Zone Special Development and Performance Standards.

¹³¹⁰ Refer to Subsection XI-10-13.18, Mobile Food Vending, of this Chapter.

⁹¹¹ Entrances to the services bays shall not be open to the street but shall be so designed to face the rear or interior side property line.

⁴⁰¹² Within MP zones, rental and repair may be considered only when ancillary to new auto dealerships.

¹⁴¹³ Within MP zones, boat and camper sales are prohibited. Dealerships shall be on property at least three acres or greater in area.

¹² See Subsection XI-10-7.04(A)(1), Industrial Zone Special Development and Performance Standards.

¹³ Refer to Subsection XI-10-13.18, Mobile Food Vending, of this Chapter.

Title XI, Chapter 10, Subsection 53.09 (“Off-Street Parking Required by Land Use”) of the Milpitas Municipal Code is hereby amended to read as follows:

Table 53.09-1
Number of Parking Spaces Required

Use	Minimum Parking Spaces Required
A. Commercial Uses	
<u>Business Support Services</u>	<u>1 per 350 sq. ft.</u>
<u>Commercial Services¹ (floral shops, barber shops, dry cleaners, Laundromats, photocopy shops)</u>	<u>1 per 200 sq. ft.</u>
Furniture and appliance stores and other bulky item retail; <u>Furniture Repair and Reupholstery</u>	1 per 350 sq. ft.
General Retail and Convenience Stores; <u>Check Cashing</u>	1 per 200 sq. ft.
Mortuary, funeral parlor	1 per 4 seats and 1 per employee
<u>Personal Services</u>	<u>1 per 200 sq. ft.</u>
Plant nursery	1 per 200 sq. ft.
<u>Repair and Cleaning, Small Items</u>	<u>1 per 200 sq. ft.</u>
B. Entertainment and Recreation	
Arcade and amusement	1 per 200 sq. ft.
Billiards	1 per 200 sq. ft.
Bowling Alleys including incidental accessory uses (eating and drinking, billiards, etc.)	6 per alley or lane
Clubs and Lodges	1 per 200 sq. ft.
Commercial Athletic Facility (indoor)	1 per 150 sq. ft.
With outdoor or indoor sports courts	
Small courts (tennis, badminton)	2 per court plus required parking for other uses on site.
Large courts (basketball, volleyball)	5 per court plus required parking for other uses on site.
Golf Course	6 per hole plus parking for ancillary uses
Miniature Golf	1.25 per tee, plus 1 per employee
Motion Picture Theater (indoor)	1 per 3.5 seats
Nightclub	1 per 30 sq. ft.
C. Health and Veterinarian Uses	
Convalescent Homes	1 per 2 beds or 1 per 1,000 sq. ft, whichever is greater
Hospital	1 per bed or 1 per 220 sq. ft., whichever is greater
Kennel, indoor	1 per 1,000
Massage Establishments	Two per treatment room or if no treatment room, one per 2 chairs or 2 tables
Medical and dental Clinic and Office	1 per 225 sq. ft.
Veterinary Clinic and Animal Grooming	1 per 250 sq. ft.
D. Industrial Uses	

Distribution Manufacturing <u>Processing/Plant (Dry-cleaning plant, photo finishing/printing, etc.)</u> Warehousing	1 per 1,500 sq. ft.
Mini Storage	1 per 5,000 sq. ft., plus 1 per resident manager
Wholesale	1 per 500 sq. ft.
Research and Development Medical Laboratories <u>Soils and Materials Testing Laboratories</u> High employee demand uses	1 per 300 sq. ft.
Office space within an industrial building (to be combined with categories above)	1 per 350 sq. ft.
E. Lodging	
Extended Stay Hotels	0.7 per guest room or unit ⁵
Hotels	0.7 per guest room ⁵
Motels	0.7 per guest room ⁵
F. Professional Offices, Financial Institutions and Related Uses	
Automated Teller Machine (free standing)	2 per machine
Financial institutions (banks, savings and loans, etc.)	1 per 180 sq. ft.
Offices, administrative and business services and <u>professional</u>	1 per 240 sq. ft.
G. Public, Quasi-Public and Assembly Uses	
Adult Day Care	1 per 500 sq. ft.
Auditoriums and theaters and places of meeting and assembly	1 per 4 seats
<i>Child Care Uses^{2,3}:</i>	
Day Care School	1 per classroom or 1 per 500 sq. ft., whichever is greater.
Small family child-care home	Same as required for underlying residential use
Large Family Child Care Home and Child Care Centers	1 per 1.5 employees
Community Center	1 per 4 fixed seats, or 1 per 6 linear feet of seating, plus 1 per 200 square feet of area without seating but designed for meeting or assembly by guests, plus 1 per 500 sq. ft. of outdoor area developed for recreational purposes
Museums	1 per 400 sq. ft.
Public Utilities	1 per 400 sq. ft.
Religious Institutions	1 per 5 seats in the main area of assembly plus parking for classrooms and offices in this table. Where there are no seats, then 1 seat equals 7 sq. ft.
<i>Educational Institutions:</i>	
School-elementary (K-8 Private)	1 per classroom, plus 1 per 240 sq. ft. of office
School-secondary (9-12 Private)	1 per classroom, plus 1 per 240 sq. ft. of office, plus 1 per 5 students

Vocational School, including business, professional, technical and trade	1 per 200 sq. ft.
Instructional Studios (Dance, Yoga)	1 per 150 sq. ft.
Private instruction, personal enrichment (tutoring)	1 per instructional area or classroom, whichever is greater. No fewer than 3 spaces.
Stadiums and arenas	1 per 4 seats
H. Restaurants or Food Service	
Banquet facilities	See restaurants below
Bars, Drinking Establishments	1 per 30 sq. ft.
Drive thru	See "Vehicle Related Uses" section.
<i>Restaurants:</i>	
Sit down:	
Indoor and outdoor:	1 per 39 square feet of dining area.
Take out:	1 per 2.5 seats (indoor/outdoor) plus 1 per 60 sq. ft. GFA for the ordering or take out area.
Mobile Food Parks	1 per 2.5 seats provide for on-site dining, plus 1 per 60 sq. ft. of lot area dedicated to mobile food vending.
I. Residential Uses	
Single Family and Duplexes:	
3 bedrooms or fewer	2 per unit ⁴
4 or more bedrooms	3 per unit, plus 1 per each additional bedroom ⁴
Multi-Family (R3—R5 zones):	
Studio	1 covered per unit
1 bedroom	1.5 covered per unit
2—3 bedrooms	2 covered per unit
4 or more bedrooms	3 per unit, plus 1 additional space for each additional bedroom (at least two covered). ⁴
Guest parking	
Projects with Parking structures	15% of the total required, may be uncovered
Projects with Private garages	20% of the total required, may be uncovered
Bicycle parking	5% of the total required
Boarding houses, dormitories, sororities and fraternities	1 per each room rented
Live-Work Units	<i>Single family and duplexes</i> parking requirements shall apply, plus 1.5 for the commercial component
<i>Mixed Use buildings or sites</i>	
Residential use	
Studio	1 covered per unit
1 bedroom	1.5 covered per unit
2—3 bedrooms	2 covered per unit
4 or more bedrooms	3 per unit, plus 1 additional space for each additional bedroom (at least two covered). ⁴
Guest parking	
Projects with Parking structures	15% of the total required, may be uncovered
Projects with Private garages	20% of the total required, may be uncovered
Bicycle parking	5% of total required

Commercial use		
	Ground Floor Retail	1 per 250 sq. ft.
	Office	If building is 1,000 sq. ft. or smaller: 1 per 250 sq. ft. If building is larger than 1,000 sq. ft.: 3.3 per 1,000 sq. ft.
	Short-Term Rentals	1 per unit
	Other uses	Refer to specific uses within this table
	Bicycle parking	5% of total required
Mobile Homes		Refer to Section 13.07, Mobile Homes
Senior Housing		1 per unit plus 2 per manager's unit
Single Room Occupancy (SRO)		1 per unit
J. Vehicle Related Uses		
	Auto rental agency	1 per 400 sq. ft. plus 1 per rental vehicle
	Auto repair (tire, oil change, smog check, etc.)	3 per service bay
	Car Wash	1 per 200 sq. ft. of building area and reservoir space outside of building equal to two (2) times the maximum capacity of facility
<i>Gas & Service Stations:</i>		
	With Retail	1 per 200 sq. ft.
	With Auto Repair	3 per service bay
<i>Auto dealerships:</i>		
	Sale or lease of vehicle	1 per 200 sq. ft. of showroom
	Office	1 per 200 sq. ft.
	With Service Bays	3 per service bay
	Window service or drive-thru in conjunction with any other use	The required parking for primary use (restaurant, or other use providing window service) plus queuing of 5 vehicles which do not interfere with any on-site parking spaces

¹ Refer to Subsection 2.03, Definitions, of this Chapter for the definition of various land use types under "Commercial Uses."

² For loading and unloading: One (1) parking space per six (6) children up to five (5) spaces and thereafter one (1) space per ten (10) children. Driveways, garage aprons and street frontage may be counted if appropriate permits are first received when calculating spaces for child-care homes. Tandem spaces are prohibited.

³ Exceptions for Child Care Requirements: The parking and loading/unloading requirements for child-care facilities may in the Planning Commission's discretion be reduced, based on an empirical study (provided by the applicant) which establishes no adverse effects will occur as a result. The required number of loading/unloading spaces may be reduced without a study by one (1) space for each employee permanently assigned to load and unload children from vehicles.

⁴ Applicable to new and existing projects being remodeled resulting in additional bedrooms submitted for approval after April 7, 2009. Existing projects or projects either entitled or submitted active planning applications prior to April 7, 2009 shall use the parking regulations in effect at the time of entitlement or application submittal. For R4, R5, MXD/MXD2/MXD3 zones, 15% guest parking is legal and conforming for projects entitled or active planning applications submitted prior to April 7, 2009.

⁵ Refer to Subsection XI-10-53.15, Parking Standards for Hotels and Motels, of this Chapter for allowed reductions to minimum parking requirements

SECTION 10. 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 11. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take 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.

Item # C9.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve and Authorize the City Manager to Execute a Stormwater Management Facilities Operation and Maintenance Agreement between the City of Milpitas and Toll West Coast, LLC for the Parkside Project at 1980 and 1992 Tarob Court and 551 Lundy Place (Staff Contact: Steve Erickson, Engineering Director / City Engineer, 408-586-3301; and Roberto Alonzo, Principal Civil Engineer, 408-586-3316)
Category:	Consent Calendar-Community Development
Meeting Date:	11/15/2022
	<u>Recommendation:</u> Approve and authorize the City Manager to execute a Stormwater Management Facilities Operation and Maintenance Agreement between the City of Milpitas and Toll West Coast, LLC for the Parkside Project at 1980 and 1992 Tarob Court and 551 Lundy Place.

BACKGROUND:

Toll West Coast LLC (developer) received three development entitlements for the improvement of property located at 1980 and 1992 Tarob Court and 551 Lundy Place. The project is collectively known as the Parkside Project (Project). The combined project area totals approximately 8.88-acres, and it is located within the Transit Area Specific Plan Area. The three development entitlements associated with this Project are as follows:

- September 20, 2016, the City Council adopted Resolution No. 8587 for the 2.81-acre parcel located at 1980 Tarob Court for construction of 59 residential condominium units with related common areas, utilities, offsite improvements, landscaping, irrigation, and stormwater treatment measures.
- October 3, 2017, the City Council adopted Resolution No. 8702 for the 2.42-acre parcel located at 1992 Tarob Court for construction of 53 residential condominium units with related common areas, utilities, offsite improvements, landscaping, irrigation, and stormwater treatment measures.
- February 20, 2018, the City Council adopted Resolution No. 8748 for the 3.65-acre parcel located at 551 Lundy Place approving construction of 89 residential condominium units with related common areas, utilities, offsite improvements, landscaping, irrigation, and stormwater treatment measures.

The Project will utilize required Best Management Practices (BMP), Low Impact Development (LID) and Integrated Management Practices (IMP) for the post construction treatment of stormwater as required by City Ordinance and State Law.

ANALYSIS:

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

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

The Parkside Project will construct bio-retention basins and pervious pavers to meet the low impact development and post construction treatment requirements for stormwater. The developer, Toll West Coast LLC and the project Homeowners Association (HOA) will be responsible for the perpetual operation and maintenance of the stormwater treatment facilities which will be owned by the HOA and not maintained by the city.

Toll West Coast LLC has executed the required Stormwater Management Operations and Maintenance Agreement for this Project. The Agreement requires the HOA to operate and maintain the installed stormwater treatment facilities in accordance with the Municipal Regional Stormwater NPDES Permit and the HOA will compensate the City to complete the required annual system inspections.

Staff recommends the City Council approve the attached Stormwater Management Agreement (**Attached**) which has been reviewed by the City Attorney and approved as to form and by the Engineering Director/City Engineer as to content.

POLICY ALTERNATIVE(S):

Alternative 1:

Not approve the Stormwater Management Operations and Maintenance Agreement (O&M) for this Project for the perpetual operation and maintenance of the installed stormwater treatment facilities.

Pros: None

Cons: Not approving the Agreement would cause the Project to not be compliant with the Conditions of Approval for this Project as well as the requirements of the City's Municipal Code and State law.

Reason for Not Recommending: To allow the Project to move forward without delay and to be compliant with the development conditions and State law, staff recommends approval of the O&M Agreement.

FISCAL IMPACT:

The Project developer will install the privately owned stormwater treatment facilities which will not be maintained by the City. The HOA will operate and maintain the facilities and compensate the City for required annual facility inspections.

California Environmental Quality Act (CEQA):

The City Council's approval of the agreement was already reviewed under the California Environmental Quality Act (CEQA) at the time the City Council approved the entitlements for the project thru an initial environmental assessment. The Planning Department conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA) and determined that the project is exempt from further environmental review pursuant to Section 15168(c)(2) of the CEQA Guidelines because of its consistency with the certified EIR for the Transit Area Specific Plan adopted on June 3, 2008, by the City Council. On this basis, the City Council relies on the previous CEQA review conducted in approving this agreement.

RECOMMENDATION:

Approve and authorize the City Manager to execute a Stormwater Management Facilities Operation and Maintenance Agreement between the City of Milpitas and Toll West Coast, LLC for the Parkside Project at 1980 and 1992 Tarob Court and 551 Lundy Place.

Attachment(s):

Stormwater Management Facilities Operation and Maintenance Agreement

Control No. 2022-_____
 Recording Requested by
 and when Recorded, return to:

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

Attn: City Clerk

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

Document Transfer Tax is \$ 0

() Computed on full value of property conveyed

() Computed on full value less value of liens and encumbrances remaining

City transfer tax is \$ 0

Tract Map: 10421 (1980 Tarob Court)

Lots: 1 to 6 (All lots have treatment measures)

Tract Map: 10455 (1992 Tarob Court)

Lots: 1 & 4 to 7

Parcels: A & B

Tract Map: 10475 (551 Lundy Place)

Lots: 1 to 4 & 6 to 13 (Except Lot 5 all lots have treatment measures)

STORMWATER MANAGEMENT FACILITIES OPERATION AND MAINTENANCE AGREEMENT

This Stormwater Management Facilities Operation and Maintenance Agreement ("AGREEMENT") is made and entered into this _____ day of _____ 2022 ("Effective Date"), by and between Toll West Coast, LLC a Delaware Limited Liability Company ("Property Owner") and the City of Milpitas, a municipal corporation of the State of California ("City").

RECITALS

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

- A. **WHEREAS**, the Property Owner is the owner of real property more particularly depicted and described on the attached as **Exhibit A** ("Property") and fully incorporated herein by reference; and
- B. **WHEREAS**, the Property Owner received three entitlements from the City allowing the development of the Properties as a common interest development under one HOA.

- C. **WHEREAS**, On September 20, 2016, 1980 Tarob Court was entitled for the construction of 59 residential condominium units with related common areas, and dedicate all necessary easements on a 2.81 acre site located at 1980 Tarob Court in Milpitas and more commonly known as Parkside, Project No. PJ1374, (the "Project") on the Property; and subject to conditions set forth in the following (collectively "City Approvals"):
1. Resolution No. 8587 approving Site Development Permit No. SD15-0015,
 2. Resolution No. 8587 approving Vesting Tentative Map No. MT15-0013,
 3. Resolution No. 8587 approving Conditional Use Permit No. UP15-0020, and
 4. Resolution No. 8587 approving Environmental Assessment No. EA16-0003;
- D. **WHEREAS**, On October 3, 2017, 1992 Tarob Court was entitled for the construction of 53 residential condominium units with related common areas, and dedicate all necessary easements on a 2.42 acre site located at 1992 Tarob Court in Milpitas and more commonly known as Parkside, Project No. PJ5018, (the "Project") on the Property; and subject to conditions set forth in the following (collectively "City Approvals"):
1. Resolution No. 8702 approving Site Development Permit No. SD16-0010,
 2. Resolution No. 8702 approving Vesting Tentative Map No. MT16-0004, and
 3. Resolution No. 8702 approving Conditional Use Permit No. UP16-0029;
- E. **WHEREAS**, On February 20, 2018, 551 Lundy Place was entitled for the construction of 89 residential condominium units with related common areas, and dedicate all necessary easements on a 3.65 acre site located at 551 Lundy Place in Milpitas and more commonly known as Parkside, Project No. PJ5030, (the "Project") on the Property; and subject to conditions set forth in the following (collectively "City Approvals"):
1. Resolution No. 8748 approving Site Development Permit No. SD16-0009,
 2. Resolution No. 8748 approving Vesting Tentative Map No. MT16-0003, and
 3. Resolution No. 8748 approving Conditional Use Permit No. UP16-0028;
- F. **WHEREAS**, discharges to the City's municipal separate storm sewer system ("MS4") are regulated under state and federal law pursuant to Waste Discharge Requirements and National Pollutant Discharge Elimination System permit ("MS4 Permit") issued by the Regional Water Quality Control Board, San Francisco Region ("Regional Board").
- G. **WHEREAS**, pursuant to the requirements of the MS4 Permit and the City's Stormwater and Urban Runoff Pollution Control Ordinance as codified in Milpitas Municipal Code Chapter 16 ("Ordinance"), the City Approvals require the Property Owner to install, operate and maintain, at no cost or expense to the City and as part of the common area as defined by the Davis-Stirling Common Interest Development Act, the Permanent Stormwater Pollution Prevention Measures ("BMPs") more particularly described in the City-approved Stormwater Control Operation and Maintenance Plan (sometimes referred to herein as "Plan") for the Project attached hereto as

Maintenance Plan (sometimes referred to herein as "Plan") for the Project attached hereto as **Exhibit B** and fully incorporated herein by reference; and

- H. **WHEREAS**, the Stormwater Control Operation and Maintenance Plan may be subsequently modified from time to time with City's written approval and such changes shall be fully incorporated as part of this Agreement by this reference; and
- I. **WHEREAS**, the Stormwater Control Operation and Maintenance Plan includes provisions for the BMP Operation and Maintenance and an annual inspection checklist for the BMPs constructed on the Property, and
- J. **WHEREAS**, this Agreement memorializes the Property Owner's obligations, either directly or through a property owners association, for maintenance, operations, and inspection under the City's Ordinance and the approved Stormwater Control Operation and Maintenance Plan.

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

SECTION 1. Responsibility for Operation and Maintenance:

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

SECTION 2: Inspection by Property Owner:

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

SECTION 3. Facility Inspection by the City:

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

minimum balance of Four Thousand Dollars (\$4,000) for inspection by City Staff pursuant to this Section 3. The deposit of Four Thousand Dollars (\$4,000.00) shall be made simultaneously with the execution of this Agreement.

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

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

- (a) Enforcement Action. If the Property Owner or its successors fail to operate and maintain the BMPs in good working order and in accordance with the approved Plan and the City's Ordinance, the City may, but is not required to, pursue any enforcement action available at law or in equity to cause the completion of all maintenance and may charge the costs of such enforcement action against the Property Owner in any manner authorized by law or in equity.
- (b) City Maintenance. In the event of Property Owner's failure to operate and maintain BMPs in accordance with the Plan and the City's Ordinance, the City may also, with prior written notice, enter the Property to return the BMPs to good working order; provided however that the Property Owner shall have 30 days after any such notice, or such other time provided by law, to cure the relevant failure and provided further that the Property Owner shall have such additional time after the initial 30 days to complete a cure so long as Property Owner commences the cure within the initial 30 days and diligently prosecutes the cure to completion. Notwithstanding the foregoing, City may in its sole discretion enter the Property to return the BMPs to good working in an emergency and take any other necessary action to mitigate an emergency without any notice to Property Owner. The City is under no obligation to maintain or repair the BMPs, and this Agreement may not be construed to impose any such obligation on the City. If the City, under this Section 4 takes any action to return the BMPs to good working order, the Property Owner shall reimburse the City for all the reasonable costs and expenses incurred by the City. The City will provide the Property Owner with an itemized invoice of the City's costs and expenses and the Property Owner shall make full payments to the City within thirty (30) days of the date of the invoice. If the Property Owners fails to pay the invoice within thirty (30) days, the City shall be entitled to cause a lien for any such unpaid maintenance expense bill to be recorded against the Property. In addition, the City shall be entitled to have the unpaid amount of the invoice placed as a special assessment on the next regular tax bill levied against the Property, after which such assessment shall be collected in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and same procedures under foreclosure and sale in the case of delinquency as provided for ordinary municipal taxes. The actions described in this section are in addition to and not in lieu of other legal remedies provided by law. Notwithstanding the above, it is understood that City is under no obligation to repair or maintain the BMPs, and in no event shall this Agreement be construed to impose any such obligation on City.
- (c) Specific Performance. The provisions of this Agreement are expressly declared to be for the benefit of the City. The City may bring an action to obtain specific performance of this Agreement and may recover its costs, including attorney fees, incurred in bringing such action.

SECTION 5: Successors and Assigns:

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

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

SECTION 6. Indemnity:

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

SECTION 7. Severability:

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

SECTION 8. Non-Discrimination:

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

SECTION 9. Governing Law:

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

SECTION 10. Recordation:

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

SECTION 11. Books and Records:

- A. The Property Owner shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements or in anyway relating to the performance of this Agreement for a minimum period of three (3) years, or for any longer period required by law.
- B. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at no cost to City, at reasonable any time during regular business hours, upon at least 48 hours' prior written request by the City Attorney, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at the Property Owner's address indicated for receipt of notices in this Agreement.

SECTION 12. Notices:

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

To CITY:

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

To PROPERTY OWNER:

Toll Brothers, LLC
Attn: Kevin Fielding
6800 Koll Center Parkway, Suite 320
Pleasanton, CA 94566

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

SECTION 13 . Venue:

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

SECTION 14 . Interpretation, Prior Agreements:

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

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

PROPERTY OWNER:

Toll West Coast, LLC
a Delaware Limited Liability Company

By: 
Name: Steve Savage
Title: Land Development VP, Norcal

CITY:

**CITY OF MILPITAS,
A MUNICIPAL CORPORATION**

By: _____
Steven McHarris, City Manager

Approved as to form:

By: _____
Michael Mutalipassi, City Attorney

Approved:

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

Recommended for approval:

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

ACKNOWLEDGMENT

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

State of California
County of Alameda)

On October 12, 2022 before me, Sarah Langmayer, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature

(Seal)



EXHIBIT A

REAL PROPERTY SITUATED IN THE CITY OF MILPITAS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

Tract 10421, filed on May 02, 2018, in Map Book 913, Pages 8-11, inclusive, Santa Clara County Records

Tract 10455, filed on October 16, 2019, in Map Book 926, pages 23-28, inclusive, Santa Clara County Records

Tract 10475, filed on October 15, 2020, in Map Book 933, Pages 43-48, inclusive, Santa Clara County Records

EXHIBIT B
Operation and Maintenance Plan

OPERATION AND MAINTENANCE PLAN FOR STORMWATER SYSTEMS

1980 Tarob Court, 1992 Tarob Court, 551 Lundy Place

City of Milpitas, Santa Clara County, CA

January 2022

Prepared for:

Toll West Coast, LLC
Kevin Fielding
6800 Koll Center Parkway #320
Pleasanton, CA 94566

Prepared by:

Wood Rodgers, Inc.
Karrie Mosca, PE
4670 Willow Road, Suite 125
Pleasanton, CA 94588
(925) 847-1547



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Figures

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I. BMP OPERATION AND MAINTENANCE

A. Means to Finance and Implement BMP Maintenance

Proper maintenance and operation of stormwater management facilities will be the responsibility of the HOA to be established under this project. All necessary forms or agreements will be established between the City and developer during the course of final completion of the stormwater control plan.

The applicant will prepare and submit, for the City's review, an acceptable Stormwater Control Operation and Maintenance Plan prior to completion of the construction and will execute a Stormwater Management Facilities Operation and Maintenance Agreement before sale, transfer, or permanent occupancy of the site. The applicant accepts responsibility for maintenance of stormwater management facilities until such responsibility is transferred to another entity.

B. Summary of Maintenance Requirements

Bioretention Areas remove pollutants primarily by filtering runoff slowly through an active layer of soil. Routine maintenance is needed to insure that flow is unobstructed, that erosion is prevented, and that soils are held together by plant roots and are biologically active. Typical routine maintenance consists of the following:

- Inspect inlets for channels, exposure of soils, or other evidence of erosion. Clear any obstructions and remove any accumulation of sediment. Examine rock or other material used as a splash pad and replenish if necessary.
- Inspect outlets for erosion or plugging.
- Inspect side slopes for evidence of instability or erosion and correct as necessary.
- Observe soil in the swale or planter for uniform percolation throughout. If portions of the swale or filter do not drain within 48-hours after the end of a storm, the soil should be tilled and replanted. Remove any debris or accumulation of sediment.
- Confirm that any check dams and flow spreader are in place and level and that channelization within the swale or filter is effectively prevented.
- Examine the vegetation to insure that it is healthy and dense enough to provide filtering and to protect soils from erosion. Replenish mulch as necessary, remove fallen leaves and debris, prune large shrubs or trees, and mow turf areas. Confirm that irrigation is adequate and not excessive. Replace dead

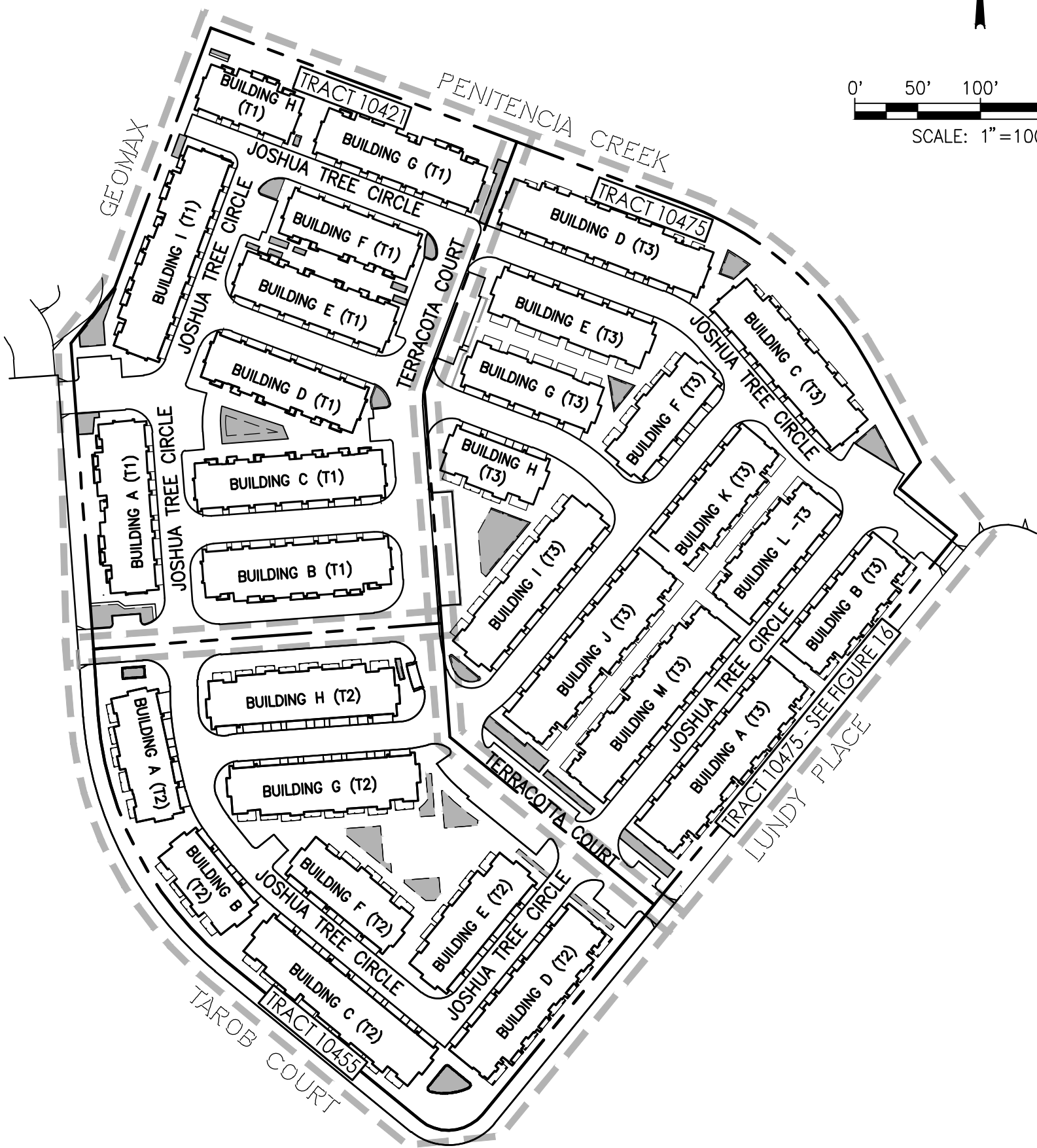
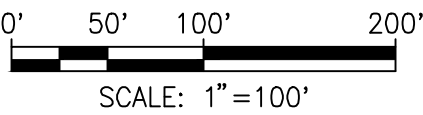
plants and remove invasive vegetation.

- Abate any potential vectors by filling holes in the ground in and around swale and by insuring that there are no areas where water stands longer than 48-hours following a storm. If mosquito larvae are present and persistent, contact the Santa Clara County Vector Control District for information and advice. Mosquito larvicides should be applied only when absolutely necessary and then only by a licensed contractor.
- Maintenance of vegetated swales and bioretention areas will be required a minimum of one (1) time per year at the beginning of the rainy season. Additional maintenance may be required throughout the rainy season if excessive debris is found within the swales, or the swales do not drain completely in 48-hours after a rain event.
- Allow leaf drop to become part of the mulch layer in tree, shrub, and groundcover areas
- Keep lawn mower blades sharp and recycle grass clippings.
- Collect lawn and garden clippings, pruning waste, and tree trimming. Chip if necessary, and compost or take to the local municipal yard waste recycling/composting facility.
- Sweep paved areas regularly to collect loose particles. Wipe up spills with rags and other absorbent material immediately; do not hose down the area to a storm drain.

FIGURE 1 - OVERALL SITE PLAN

1980 TAROB COURT, 1992 TAROB COURT
& 551 LUNDY PLACE

TOLL WEST COAST, LLC
MILPITAS CALIFORNIA
AUGUST 2020



NOTES:

1. SEE FIGURES 2-6 IN APPENDIX A FOR MORE INFORMATION ON 1980 TAROB COURT
2. SEE FIGURES 7-11 IN APPENDIX B FOR MORE INFORMATION ON 1992 TAROB COURT
3. SEE FIGURES 12-16 IN APPENDIX C FOR MORE INFORMATION ON 551 LUNDY PLACE



WOOD RODGERS
BUILDING RELATIONSHIPS ONE PROJECT AT A TIME

4670 WILLOW ROAD, STE 125 TEL 925.847.1556
PLEASANTON, CA 94588 FAX 925.847.1557

Appendix A

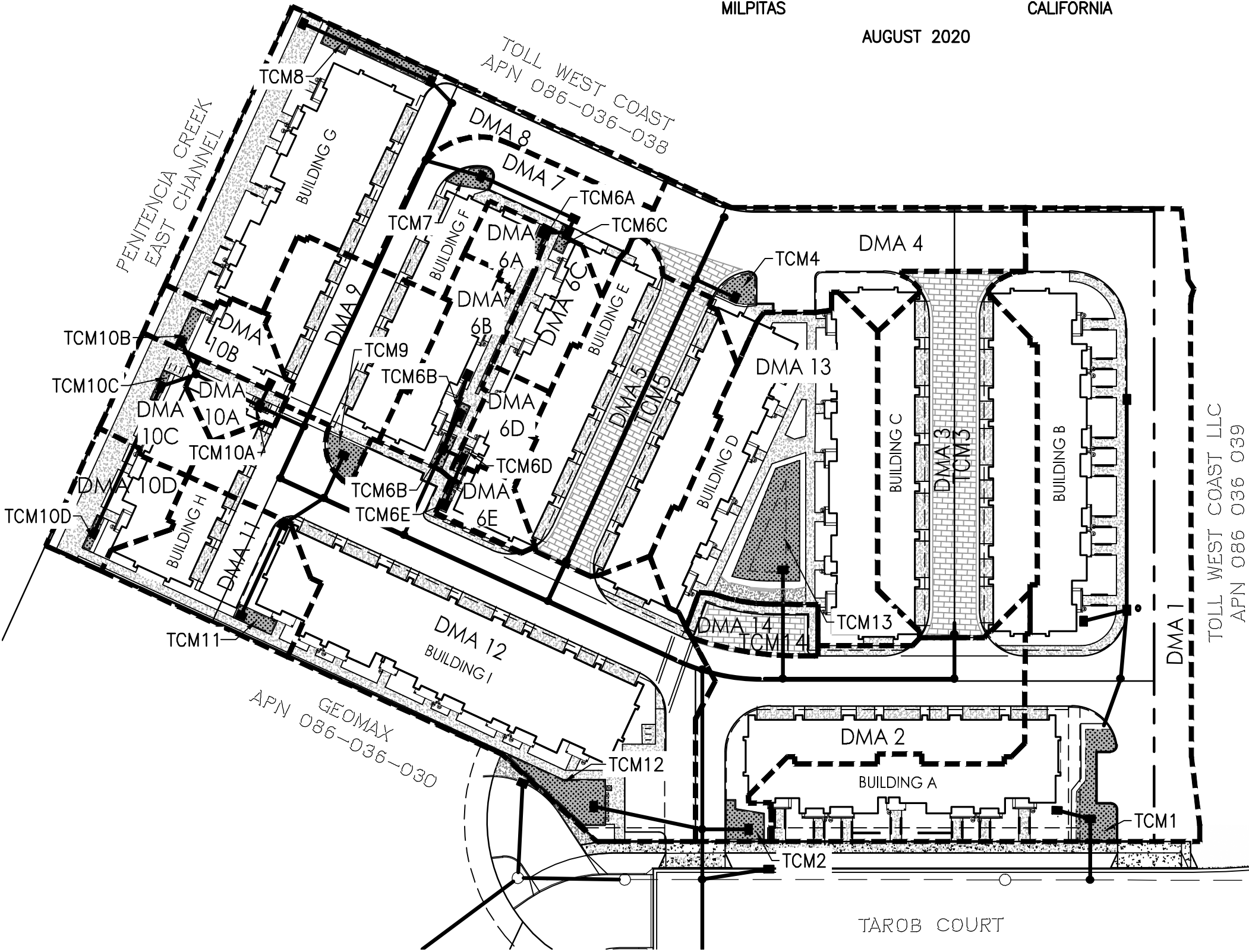
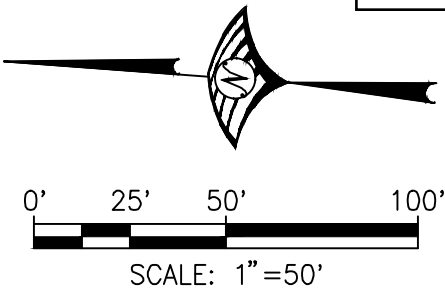
Operation and Maintenance Plan – 1980 Tarob Court

FIGURE 2
STORMWATER TREATMENT AREAS
1980 TAROB COURT

MILPITAS

CALIFORNIA

AUGUST 2020



LEGEND

- PROJECT BOUNDARY
- DRAINAGE MANAGEMENT AREA BOUNDARY
- BIORETENTION AREA
- PROPOSED STORM DRAIN
- DROP INLET
- TCM
- TREATMENT CONTROL MEASURE



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PLEASANTON, CA 94588 FAX 925.847.155

FIGURE 3

DRAINAGE MANAGEMENT AREA SUMMARY

1980 TAROB COURT

MILPITAS CALIFORNIA

AUGUST 2020

DRAINAGE MANAGEMENT AREA (DMA)	BUILDING (SF)	STREET (SF)	PAVERS (SF)	DRIVEWAY & SIDEWALK (SF)	TOTAL IMPERVIOUS (SF)	TOTAL PERVIOUS (SF)	TOTAL DRAINAGE AREA (SF)	REQUIRED TREATMENT AREA (SF)	REQUIRED PONDING DEPTH	TREATMENT TYPE
DMA 1	5779	9863	0	2488	19130	4379	23509	538	10"	TCM1
DMA 2	2531	4318	0	515	7364	955	8319	202	9"	TCM2
DMA 3	4965	0	3226	1285	9476	556	10632	–	5"5	TCM3
DMA 4	355	5124	0	0	5479	953	6717	179	6"	TCM4
DMA 5	4047	0	2958	1152	8157	491	8648	–	6"5	TCM5
DMA 6A	433	0	0	151	584	271	855	42	6"	TCM6A
DMA 6B	1518	0	0	661	2179	558	2737	98	6"	TCM6B
DMA 6C	1028	0	0	432	1460	356	1816	42	9.5"	TCM6C
DMA 6D	753	0	0	273	1026	203	1229	31	8"	TCM6D
DMA 6E	628	0	0	160	788	162	950	30	6"	TCM6E
DMA 7	4361	2463	0	1447	670	601	4175	151	6"	TCM7
DMA 8	3590	2400	0	2059	8049	2662	10711	291	6"	TCM8
DMA 9	2179	1571	0	603	4353	545	4898	196	6"	TCM9
DMA 10A	342	0	0	212	554	346	900	25	6"	TCM10A
DMA 10B	620	0	0	308	928	634	1562	75	6"	TCM10B
DMA 10C	520	0	0	717	137	526	1763	40	9"	TCM10C
DMA 10D	662	0	0	762	1424	679	2103	45	10"	TCM10D
DMA 11	7374	8612	0	3246	19232	2706	21938	511	9"	TCM11
DMA 12	845	0	0	429	1274	603	1877	37	12"	TCM12B
DMA 13	5192	0	0	1937	7129	3559	10688	1021	6"	TCM13
DMA 14	0	0	831	553	1384	0	1384	–	3"	TCM 14

- NOTES:
- ALL TREATMENT MEASURES AND TECHNICAL REQUIREMENTS FOR THIS PROJECT ARE BASED ON THE SANTA CLARA VALLEY URBAN RUNOFF POLLUTION PREVENTION PROGRAM (SCVURPPP) C.3. STORMWATER HANDBOOK DATED APRIL 2012.
 - REQUIRED SURFACE AREA OF THE BIORETENTION FACILITIES ARE SUPPORTED BY USING THE COMBINATION FLOW AND VOLUME METHOD.
 - HYDROMODIFICATION IS NOT REQUIRED BECAUSE PROPOSED PROJECT IMPERVIOUS SURFACE IS LESS THAN EXISTING IMPERVIOUS SURFACE ON THE SITE.
 - REQUIRED SURFACE AREA OF THE PERVIOUS PAVERS IS SUPPORTED BY USING THE WATER QUALITY DESIGN VOLUME 80 PERCENT CAPTURE METHOD ASSUMING A MAXIMUM PONDING DEPTH OF 6 INCHES.



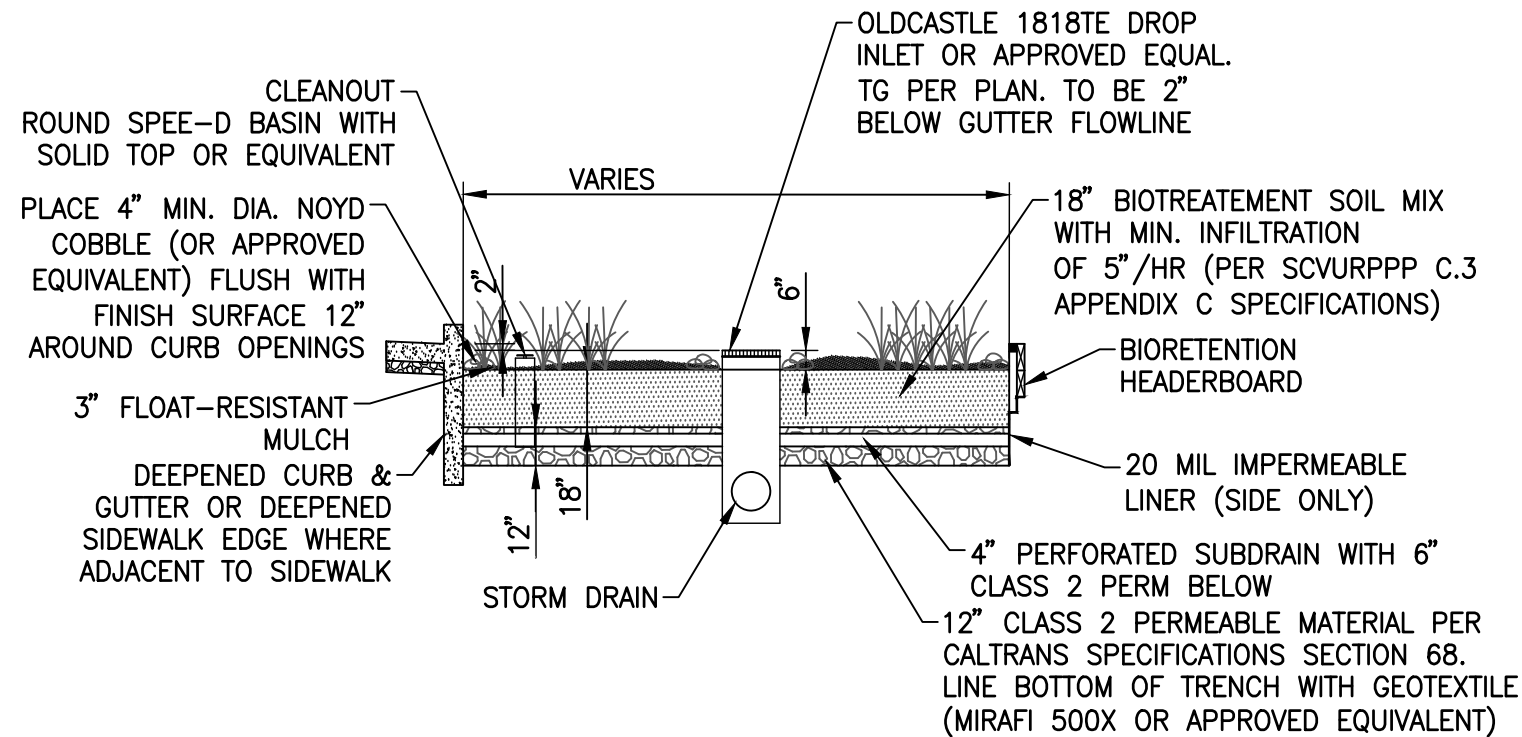
WOOD RODGERS
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4670 WILLOW ROAD STE 125 TEL 925.847.1556
PLEASANTON, CA 94588 FAX 925.847.1557

FIGURE 4 STORMWATER TREATMENT DETAILS 1980 TAROB COURT

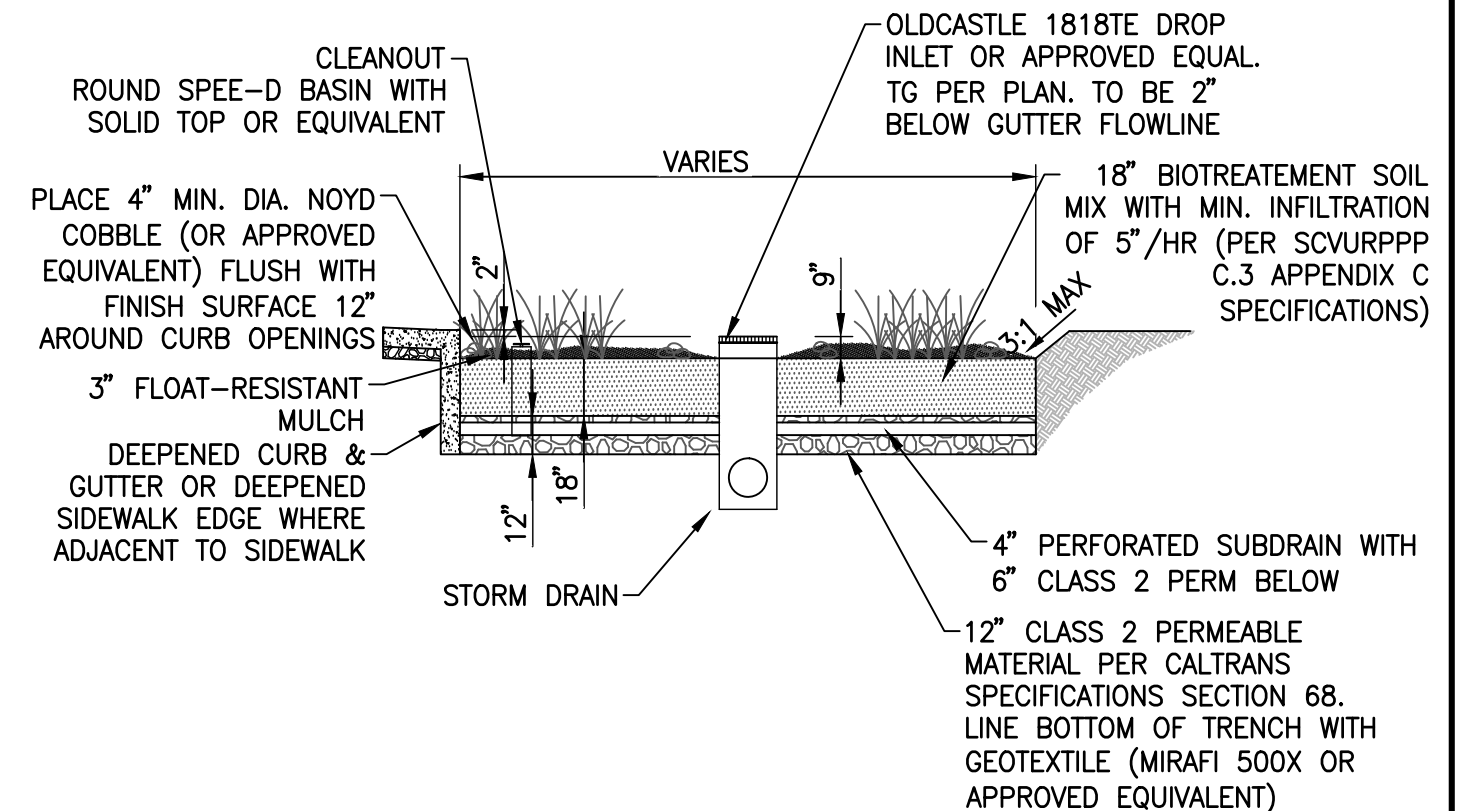
MILPITAS

CALIFORNIA

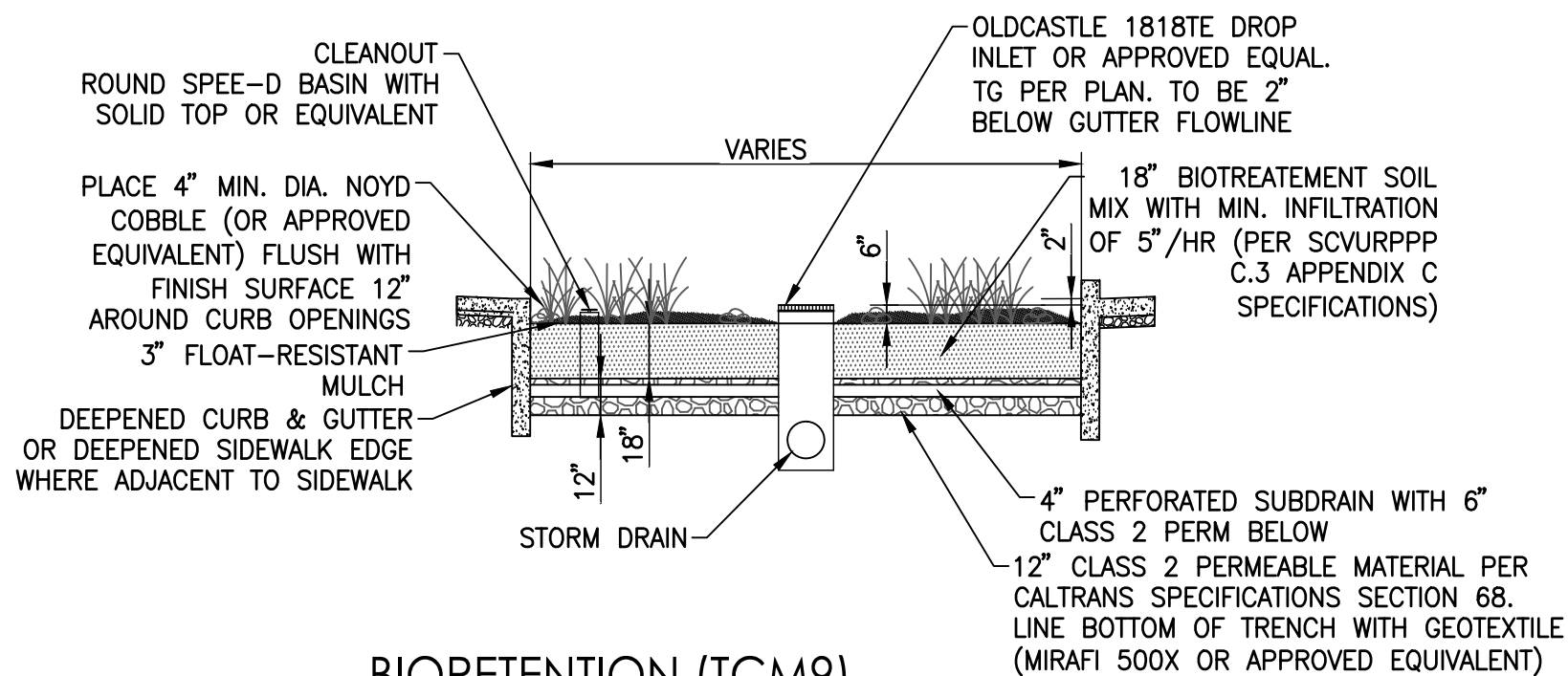
MAY 2020



BIORETENTION (TCM2/4/6A/6B/6C/6D/6E/6F/7/8/11/12A/12B)



BIORETENTION (TCM 10A/10B/10C/10D)



BIORETENTION (TCM9)

*6" MIN TO 12" MAX
SEE FIGURE 3 FOR EXACT
DEPTH OF EACH TCM

WOOD RODGERS
BUILDING RELATIONSHIPS ONE PROJECT AT A TIME

4670 WILLOW ROAD STE 125 TEL 925.847.1556
PLEASANTON, CA 94588 FAX 925.847.1556

*6" MIN TO 12" MAX
SEE FIGURE 3 FOR EXACT
DEPTH OF EACH TCM

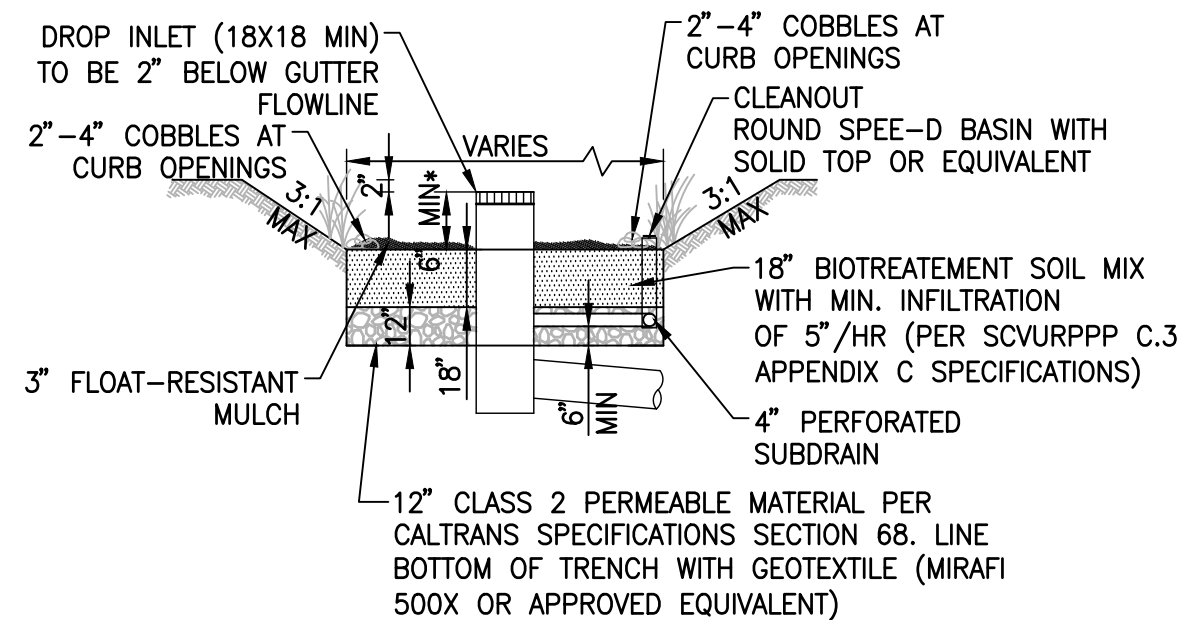
Item # C10.

FIGURE 5 STORMWATER TREATMENT DETAILS 1980 TAROB COURT

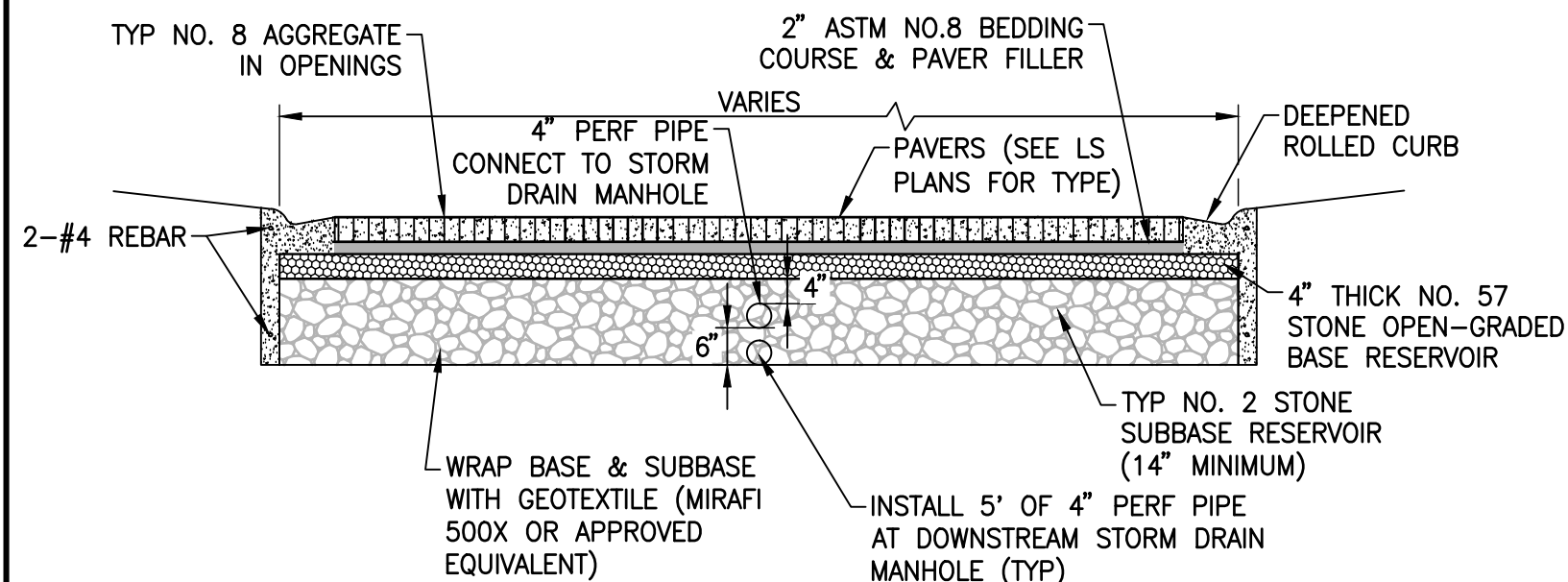
MILPITAS

CALIFORNIA

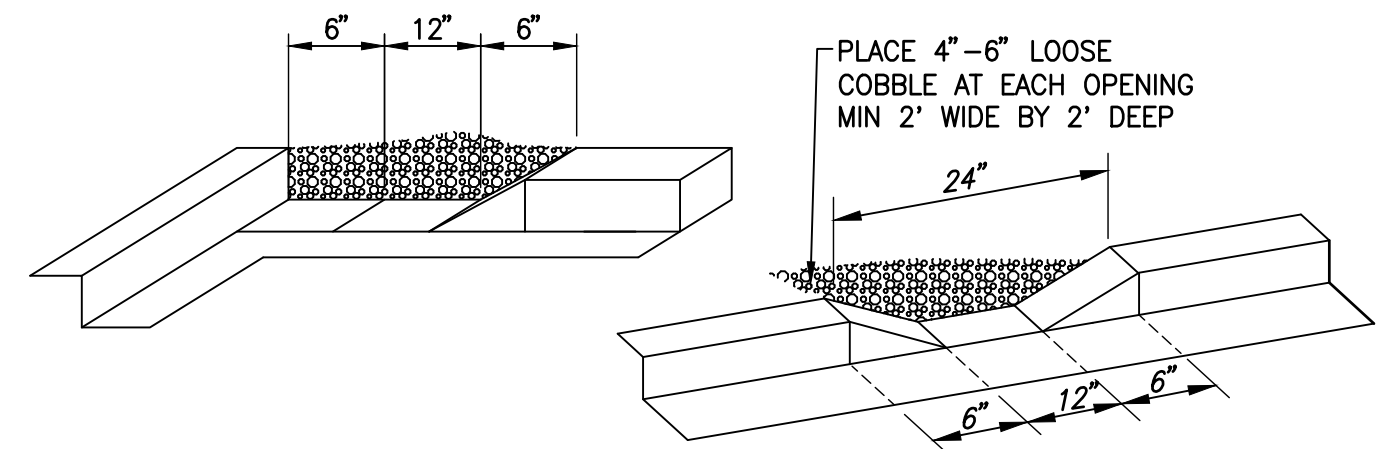
MAY 2020



BIORETENTION (TCM13)



PERVIOUS PAVERS (TCM3/5/14)



CURB CUT DETAILS

WOOD RODGERS
BUILDING RELATIONSHIPS ONE PROJECT AT A TIME

4670 WILLOW ROAD STE 125 TEL 925.847.1556
PLEASANTON, CA 94588 FAX 925.847.1556

Jobs\3266_1980_TarobCt\1980_TarobCt_OA\Civil\Studies\Drain\O&M\2020-04-30\Exhibits\1980_Tarob\FIG 4-5_TC1.dwg 5/5/2020 3:01 PM Camila Rodriguez-Castro

**Stormwater Treatment Measure Operation and Maintenance
Inspection Report to the City of Milpitas, California**

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

I. Property Information:

Property Address or APN: 086-036-040

Property Owner: Toll West Coast, LLC

II. Contact Information:

Name of person to contact regarding this report:

Phone number of contact person: Kevin Fielding Email: kfielding@tollbrothers.com

Address to which correspondence regarding this report should be directed:

6800 Koll Center Pkwy #320, Pleasanton, CA 94566

III. Reporting Period:

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

IV. Stormwater Treatment Measure Information:

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

Identifying Number of Treatment Measure	Type of Treatment Measure	Location of Treatment Measure on the Property
1	Bioretention	South of Building A
2	Bioretention	North of Building A
3	Pervious Pavers	B Court
4	Bioretention	East of Building D
5	Pervious Pavers	A Court
6A	Bioretention	Southeast corner of Building F
6B	Bioretention	South of Building F (center)
6C	Bioretention	Northeast corner of Building E
6D	Bioretention	North of Building E (center)
6E	Bioretention	Northwest corner of Building E
7	Bioretention	East of Building F
8	Bioretention	East of Building G
9	Bioretention	West of Building F
10A	Bioretention	Southeast corner of Building H
10B	Bioretention	Northwest corner of Building G
10C	Bioretention	Northeast corner of Building H
10D	Bioretention	Northwest corner of Building H
11	Bioretention	Northwest corner of Building I
12	Bioretention	Southwest corner of Building I
13	Bioretention	Between Buildings C & D
14	Pervious Pavers	Pervious parking area

V. Summary of Inspections and Maintenance: Summarize the following information using the attached Inspection and Maintenance Checklists:

Identifying Number of Treatment Measure	Date of Inspection	Operation and Maintenance Activities Performed and Date(s) Conducted	Additional Comments
1			
2			
3			
4			
5			
6A			
6B			
6C			
6D			
6E			
7			
8			
9			
10A			
10B			
10C			
10D			
11			
12			
13			
14			

VI. Sediment Removal:

Total amount of accumulated sediment removed from the stormwater treatment measure(s) during the reporting period: _____ cubic yards.
How was sediment disposed?

☐ landfill

measure(s) during the reporting period: _____ cubic yards.
How was sediment disposed?

- ☐ landfill
- ☐ other location on-site as described in and allowed by the maintenance plan
- ☐ other, explain

VII. Inspector Information:

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

Inspector Name and Title	Inspector's Employer and Address

VIII. Certification:

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

Signature of Property Owner or Other Responsible Party Date

Type or Print Name

Company Name

Address: _____

Phone number: _____ Email: _____

Please submit the Operation and Maintenance Inspection reports, Maintenance Plan, and Inspection and Maintenance checklist for each BMP to the following address:

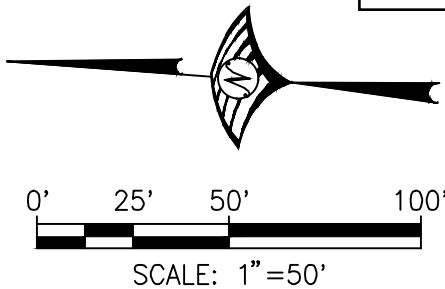
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035
Attn: Utility Engineer

FIGURE 6
MAINTENANCE EXHIBIT
1980 TAROB COURT

MILPITAS

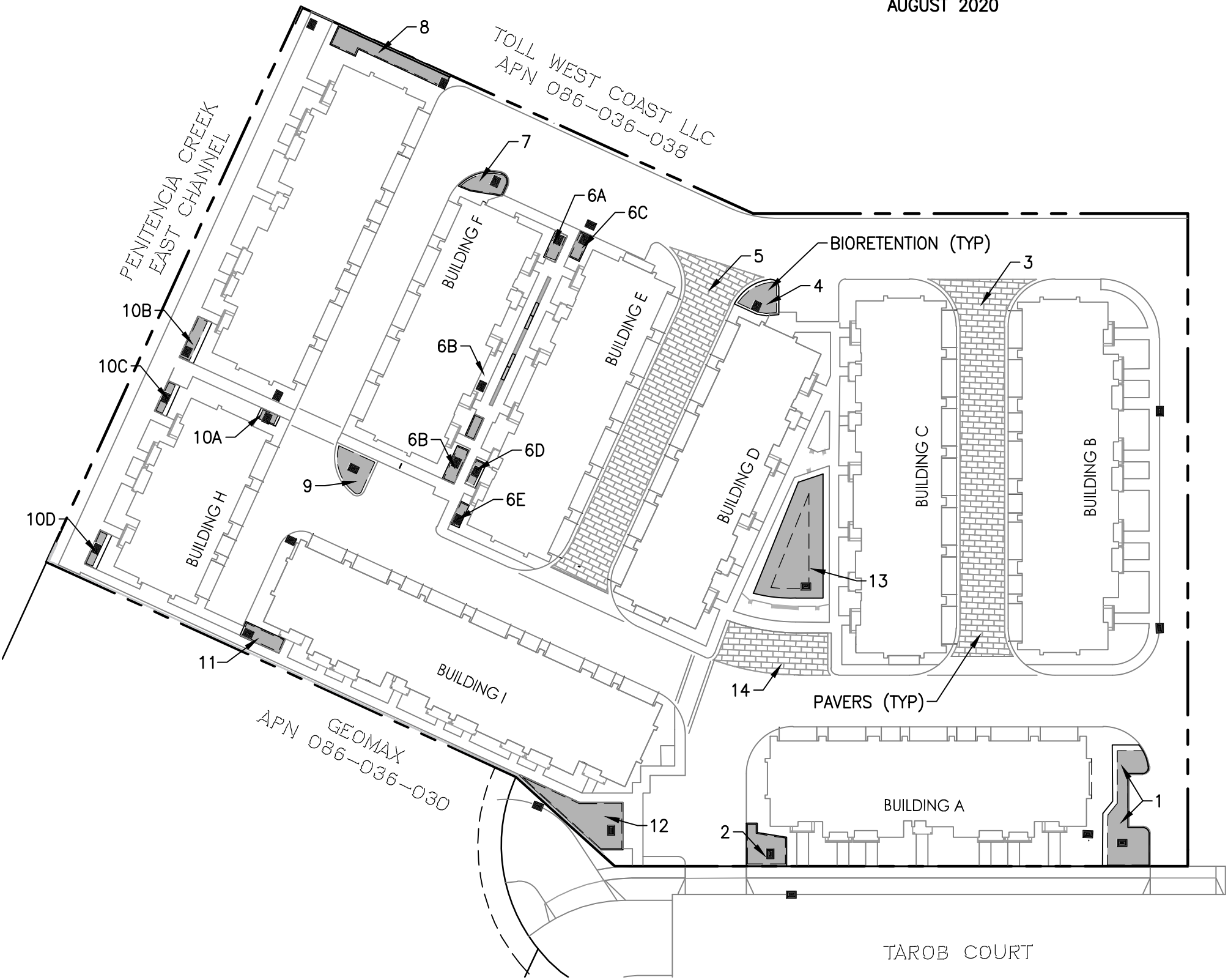
CALIFORNIA

AUGUST 2020



LEGEND

- PROJECT BOUNDARY
- [Solid Grey Box] BIORETENTION AREA
- [Hatched Box] PERVIOUS PAVERS
- [Small Square] DRAIN INLET
- 1 [Arrow] TREATMENT MEASURE NUMBER



TOLL WEST COAST LLC
APN 086 036 039



WOOD RODGERS

BUILDING RELATIONSHIPS ONE PROJECT AT A TIME

4670 WILLOW ROAD STE 125 TEL 925.847.1556
PLEASANTON, CA 94588 FAX 925.847.1556

**Bioretention Area Maintenance Plan for
1980 Tarob Court, Milpitas CA 95035
May 2020**

Project Address and Cross Streets: 1980 Tarob Court

Assessor's Parcel No.: 086-036-040

Property Owner: Toll West Coast, LLC

Designated Contact: Kevin Fielding

Phone No: (916) 217-2605

Mailing Address: 6800 Koll Center Pkwy #320, Pleasanton, CA 94566

The property contains nineteen (18) bioretention areas and 3 pervious pavers located as described below and as shown in the attached site plan¹.

- **DMA1 (bioretention)** is located south of Building A
- **DMA2 (bioretention)** is located North of Building A
- **DMA3 (pavers)** is located B Court
- **DMA4 (bioretention)** is located east of Building D
- **DMA5 (pavers)** is located A Court
- **DMA6A (bioretention)** is located in the southeast corner of Building F
- **DMA6B (bioretention)** is located south of Building F (center)
- **DMA6C (bioretention)** is located in the northeast corner of Building E
- **DMA6D (bioretention)** is located north of Building D (center)
- **DMA6E (bioretention)** is located in the northwest corner of Building D
- **DMA7 (bioretention)** is located east of Building F
- **DMA8 (bioretention)** is located east of Building G
- **DMA9 (bioretention)** is located west of Building F
- **DMA10A (bioretention)** is located in the southeast corner of Building H
- **DMA10B (bioretention)** is located in the northwest corner of Building G
- **DMA10C (bioretention)** is located in the northeast corner of Building H
- **DMA10D (bioretention)** is located in the northwest corner of Building H
- **DMA11 (bioretention)** is located in the northwest corner of Building I
- **DMA12 (bioretention)** is located in the southwest corner of Building I
- **DMA13 (bioretention)** is located between Buildings C & D
- **DMA14 (pavers)** is located in the pervious parking area

I. Routine Maintenance Activities

The principal maintenance objective is to prevent sediment buildup and clogging, which reduces pollutant removal efficiency and may lead to bioretention area failure. Routine maintenance activities, and the frequency at which they will be conducted, are shown in Table 1 and Table 2.

¹ Attached site plan must match the site plan exhibit to Maintenance Agreement.

Table 1
Routine Maintenance Activities for Bioretention/Planter Box Areas

No.	Maintenance Task	Frequency of Task
1	Remove obstructions, debris and trash from bioretention area and dispose of properly.	Monthly, or as needed after storm events
2	Inspect bioretention area for ponded water. If ponded water does not drain within 2-3 days, till and replace the surface soil and replant.	Monthly, or as needed after storm events
3	Inspect inlets for channels, soil exposure or other evidence of erosion. Clear obstructions and remove sediment.	Monthly, or as needed after storm events
4	Remove and replace all dead and diseased vegetation.	Twice a year
5	Maintain vegetation and the irrigation system. Prune and weed to keep bioretention area neat and orderly in appearance. Remove and or replace any dead plants.	Twice a year
6	Check that mulch is at appropriate depth (3 inches per soil specifications) and replenish as necessary before wet season begins.	Monthly
7	Inspect the energy dissipation at the inlet to ensure it is functioning adequately, and that there is no scour of the surface mulch.	Annually, before the wet season begins
8	Inspect bioretention area using the attached inspection checklist.	Monthly, or after large storm events, and after removal of accumulated debris or material

Table 2
Routine Maintenance Activities for Pervious Pavers

No.	Maintenance Task	Frequency of Task
1	Inspect system for obstructions and debris. Clear as necessary.	Once a month for 4-6 months after installation. Annually after this period.
2	Sweep and vacuum surface to clear voids	Every three months

Bioretention Area Maintenance Plan

Date of Inspection:.

Property Address: _____

Treatment Measure No.:

II. Use of Pesticides

The use of pesticides and quick release fertilizers shall be minimized, _____ and _____ the _____ principles _____ of integrated pest management (IPM) followed:

1. Employ non-chemical controls (biological, physical and cultural controls) before using chemicals to treat a pest problem.
2. Prune plants properly and at the appropriate time of year.
3. Provide adequate irrigation for landscape plants. Do not over water.
4. Limit fertilizer use unless soil testing indicates a deficiency. Slow-release or organic fertilizer is preferable. Check with municipality for specific requirements.
5. Pest control should avoid harming non-target organisms, or negatively affecting air and water quality and public health. Apply chemical controls only when monitoring indicates that preventative and non-chemical methods are not keeping pests below acceptable levels. When pesticides are required, apply the least toxic and the least persistent pesticide that will provide adequate pest control. Do not apply pesticides on a prescheduled basis.
6. Sweep up spilled fertilizer and pesticides. Do not wash away or bury such spills.
7. Do not over apply pesticide. Spray only where the infestation exists. Follow the manufacturer's instructions for mixing and applying materials.
8. Only licensed, trained pesticide applicators shall apply pesticides.
9. Apply pesticides at the appropriate time to maximize their effectiveness and minimize the likelihood of discharging pesticides into runoff. With the exception of pre-emergent pesticides, avoid application if rain is expected.
10. Unwanted/unused pesticides shall be disposed as hazardous waste.

III. Vector Control

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

Santa Clara Valley Vector Control District
 1580 Berger Dr.
 San Jose, California 95112
 Phone: (408) 918-4770 / (800) 675-1155 - Fax: (408) 298-6356
www.sccgov.org/portal/site/vector

IV. Inspections

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

Bioretention Area Inspection and Maintenance Checklist

Property Address: _____

Property Owner: _____

Treatment Measure No.: _____ Date of Inspection: _____ Type of Inspection: Monthly

Pre-Wet Season

After heavy runoff End of Wet Season

Inspector(s): _____

Other: _____

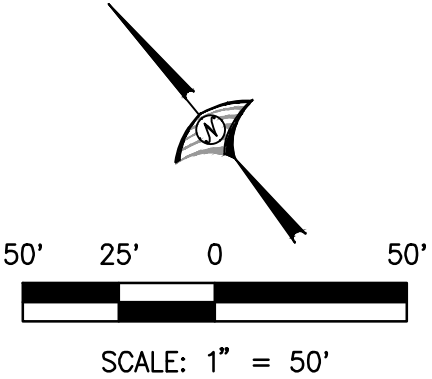
Defect	Conditions When Maintenance Is Needed	Maintenance Needed? (Y/N)	Comments (Describe maintenance completed and if needed maintenance was not conducted, note when it will be done)	Results Expected When Maintenance Is Performed
1. Standing Water	Water stands in the bioretention area between storms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

Appendix B

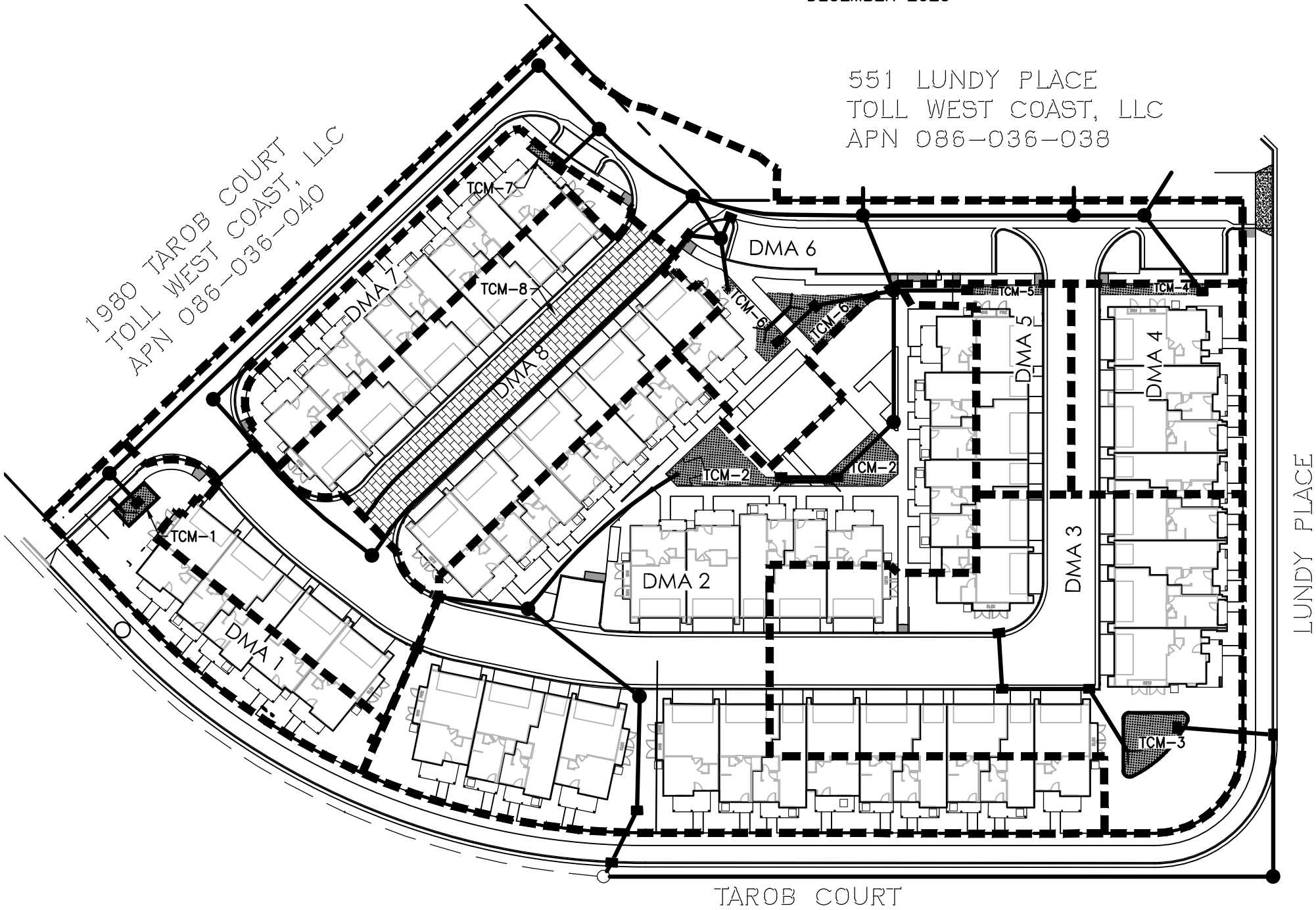
Operation and Maintenance Plan – 1992 Tarob Court

FIGURE 7
BIORETENTION TREATMENT AREAS
1992 TAROB COURT

MILPITAS CALIFORNIA
DECEMBER 2020



LEGEND	
	PROJECT BOUNDARY
	DRAINAGE AREA BOUNDARY
DMA 2	DRAINAGE MANAGEMENT AREA
TCM-2	BIORETENTION AREA



WOOD RODGERS
BUILDING RELATIONSHIPS ONE PROJECT AT A TIME
4670 WILLOW ROAD STE 125 TEL 925.847.1556
PLEASANTON, CA 94588 FAX 925.847.1

FIGURE 8

DRAINAGE MANAGEMENT AREA SUMMARY

1992 TAROB COURT

MILPITAS CALIFORNIA

DECEMBER 2020

DRAINAGE MANAGEMENT AREA (DMA)	BUILDING (SF)	STREET (SF)	PAVERS (SF)	DRIVEWAY & SIDEWALK (SF)	TOTAL IMPERVIOUS (SF)	TOTAL PERVIOUS (SF)	TOTAL DRAINAGE AREA (SF)	PROVIDED TREATMENT AREA (SF)	PONDING DEPTH	TREATMENT TYPE
DMA 1	2047	547	0	398	2992	2331	5323	109	10"²	TCM1
DMA 2	16200	2865	0	4685	23750	8462	32212	909	5.5"²	TCM2
DMA 3	8210	3623	0	1343	13176	5249	18425	410	10"²	TCM3
DMA 4	3227	788	0	367	4382	1276	5658	163	5.5"²	TCM4
DMA 5	1508	789	0	443	2740	644	3384	109	3.5"⁶	TCM5
DMA 6	5623	12769	0	3874	22266	6083	28349	663	9"²	TCM6
DMA 7	545	0	0	0	545	634	1179	47	0"²	TCM7
DMA 8	6015	0	3888	1151	11054	758	11812	3888	5.5"⁵	TCM8

NOTES:

- ALL TREATMENT MEASURES AND TECHNICAL REQUIREMENTS FOR THIS PROJECT ARE BASED ON THE SANTA CLARA VALLEY URBAN RUNOFF POLLUTION PREVENTION PROGRAM (SCVURPPP) C.3. STORMWATER HANDBOOK DATED APRIL 2012.
- REQUIRED SURFACE AREA OF THE BIORETENTION FACILITIES ARE SUPPORTED BY USING THE COMBINATION FLOW AND VOLUME METHOD.
- HYDROMODIFICATION IS NOT REQUIRED BECAUSE PROPOSED PROJECT IMPERVIOUS SURFACE IS LESS THAN EXISTING IMPERVIOUS SURFACE ON THE SITE.
- REQUIRED SURFACE AREA OF THE PERVIOUS PAVERS IS SUPPORTED BY USING THE WATER QUALITY DESIGN VOLUME 80 PERCENT CAPTURE METHOD ASSUMING A MAXIMUM PONDING DEPTH OF 6 INCHES.

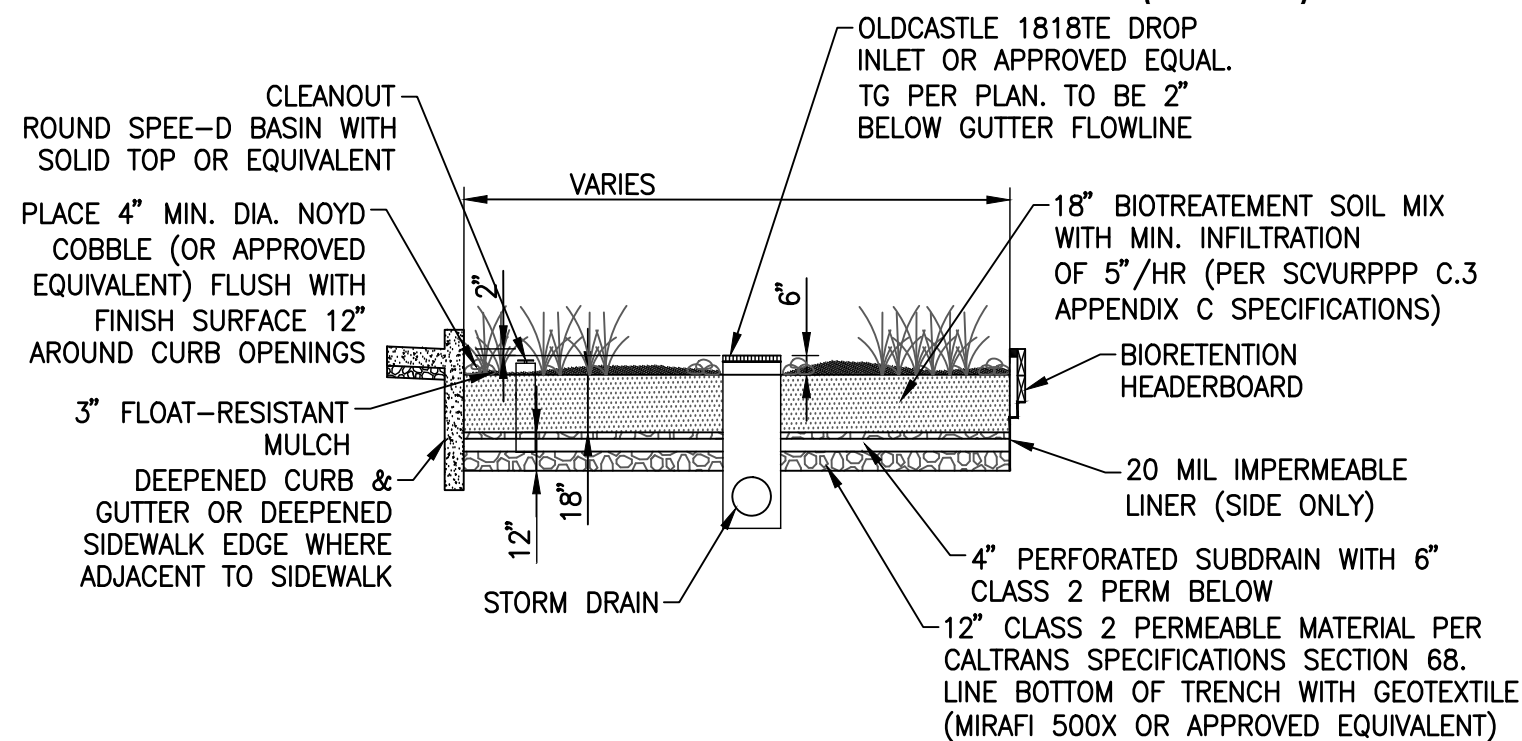
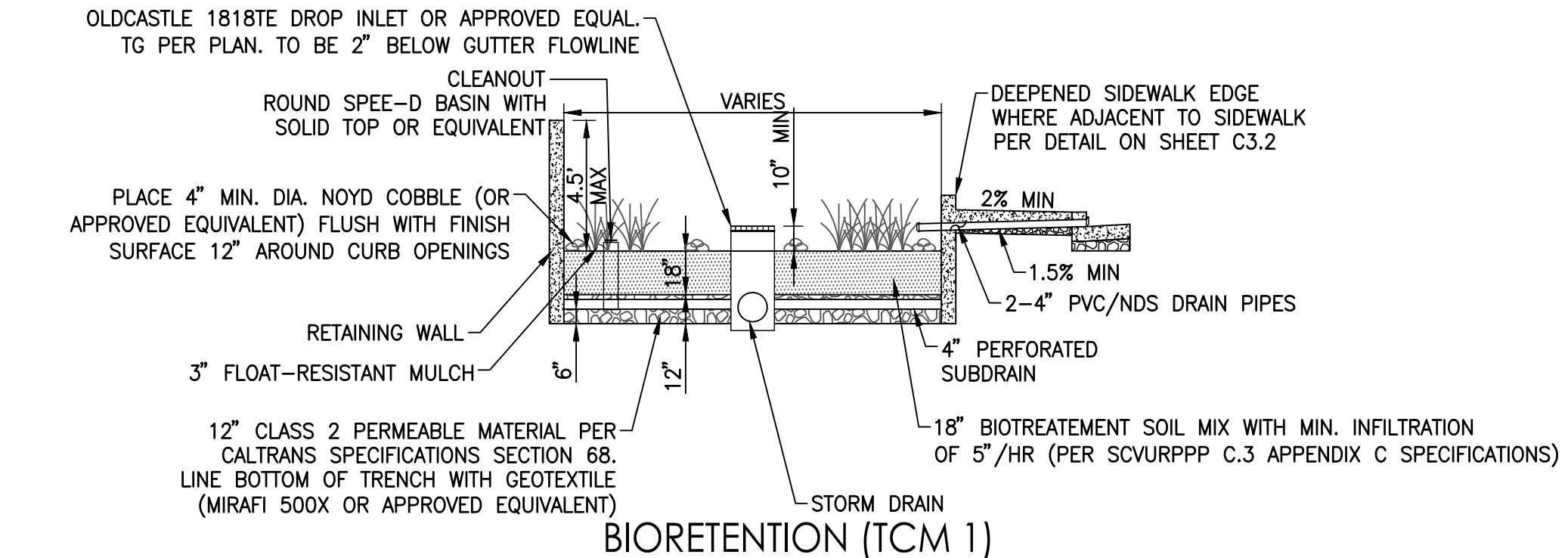
FIGURE 9 STORMWATER TREATMENT DETAILS 1992 TAROB COURT

MILPITAS

CALIFORNIA

MAY 2020

*6" MIN TO 12" MAX
SEE FIGURE 8 FOR EXACT
DEPTH OF EACH TCM



WOOD RODGERS
BUILDING RELATIONSHIPS ONE PROJECT AT A TIME

4670 WILLOW ROAD STE 125 TEL 925.847.1556
PLEASANTON, CA 94588 FAX 925.847.1556

*6" MIN TO 12" MAX
SEE FIGURE 8 FOR EXACT
DEPTH OF EACH TCM

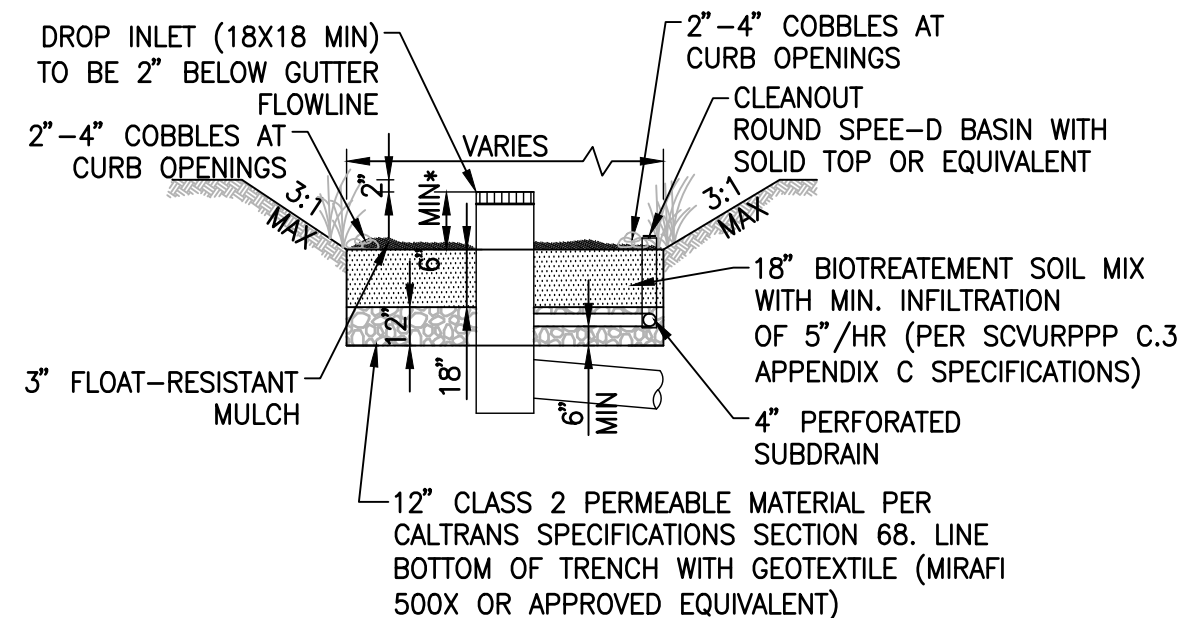
Item # C10.

FIGURE 10 STORMWATER TREATMENT DETAILS 1992 TAROB COURT

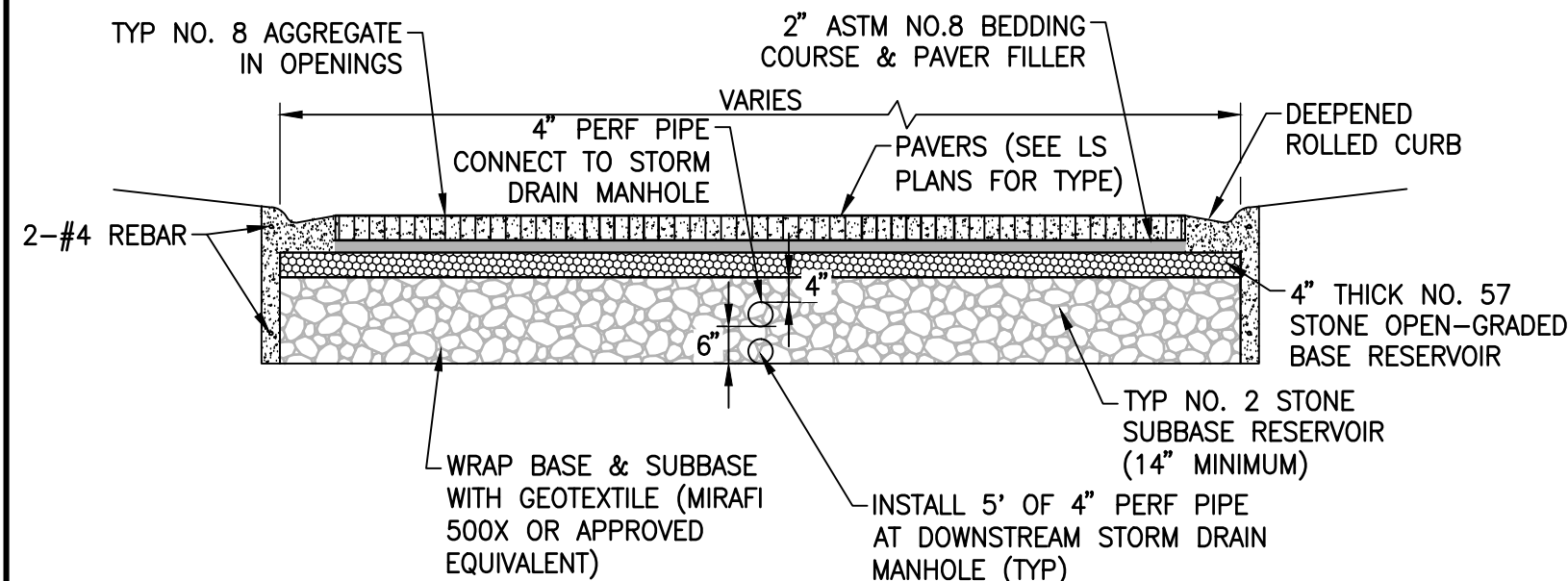
MILPITAS

CALIFORNIA

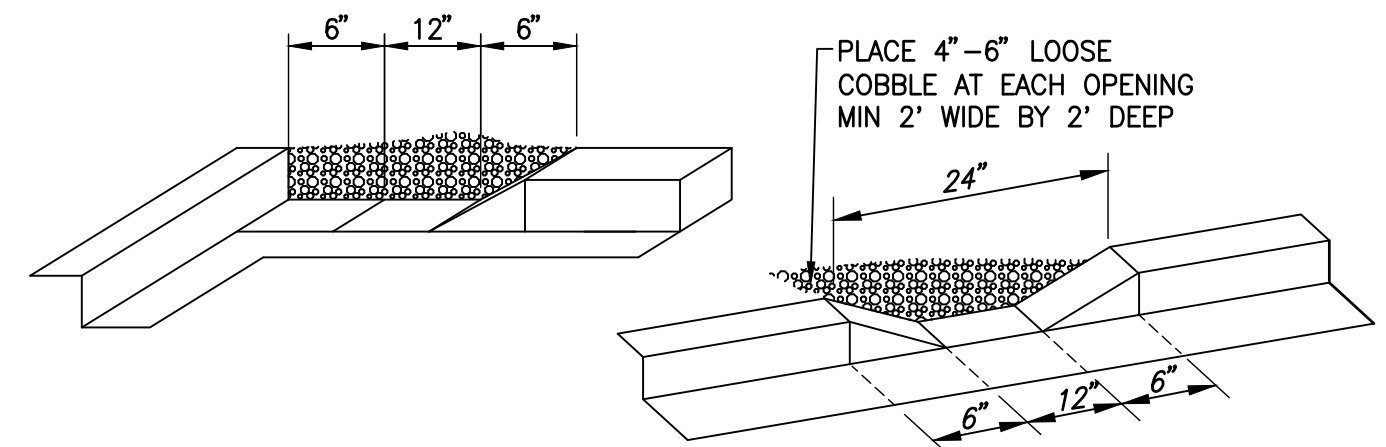
MAY 2020



BIORETENTION (TCM 3)



PERVIOUS PAVERS (TCM 8)



CURB CUT DETAILS

WOOD RODGERS
BUILDING RELATIONSHIPS ONE PROJECT AT A TIME

4670 WILLOW ROAD STE 125 TEL 925.847.1556
PLEASANTON, CA 94588 FAX 925.847.1556

Stormwater Treatment Measure Operation and Maintenance Inspection Report to the City of Milpitas, California

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

I. Property Information:

Property Address or APN: 086-036-039

Property Owner: Toll West Coast, LLC

II. Contact Information:

Name of person to contact regarding this report:

Phone number of contact person: Kevin Fielding Email: kfielding@tollbrothers.com

Address to which correspondence regarding this report should be directed:

6800 Koll Center Pkwy #320, Pleasanton, CA 94566

III. Reporting Period:

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

IV. Stormwater Treatment Measure Information:

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

Identifying Number of Treatment Measure	Type of Treatment Measure	Location of Treatment Measure on the Property
1	Bioretention	North of Building A
2	Bioretention	Northeast of Building F (center)
3	Bioretention	Southwest of Building D
4	Bioretention	Northeast of Building D
5	Bioretention	Northeast of Building E
6	Bioretention	East of Building G
7	Bioretention	Northeast corner of Building H
8	Pervious Pavers	South of Building H

V. Summary of Inspections and Maintenance: Summarize the following information using the attached Inspection and Maintenance Checklists:

Identifying Number of Treatment Measure	Date of Inspection	Operation and Maintenance Activities Performed and Date(s) Conducted	Additional Comments
1			
2			
3			
4			
5			
6			
7			
8			

VI. Sediment Removal:

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

How was sediment disposed?

- ☐ landfill
- ☐ other location on-site as described in and allowed by the maintenance plan
- ☐ other, explain

VII. Inspector Information:

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

Inspector Name and Title	Inspector's Employer and Address

VIII. Certification:

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

Signature of Property Owner or Other Responsible Party Date

Type or Print Name

Company Name

Address: _____

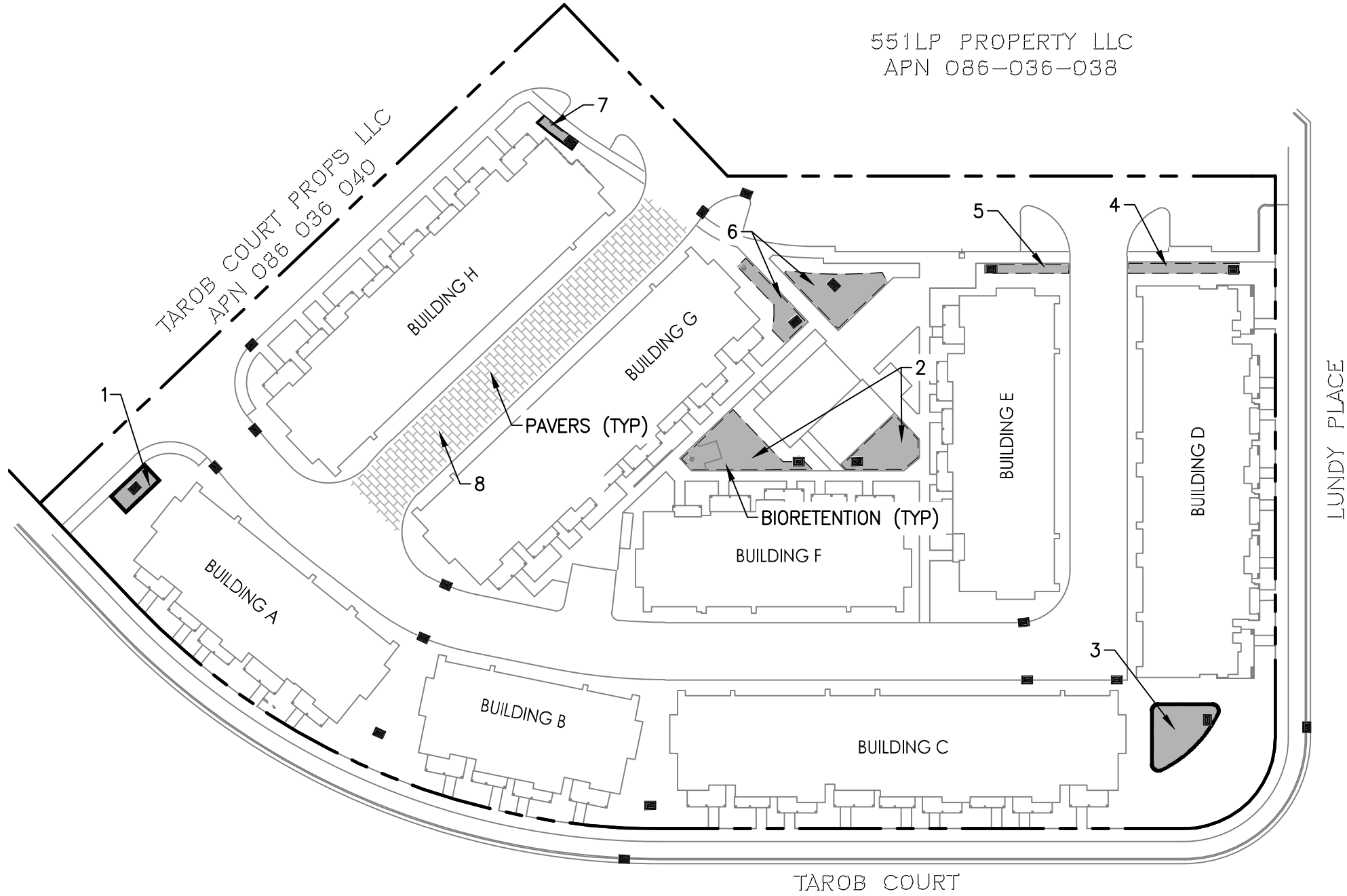
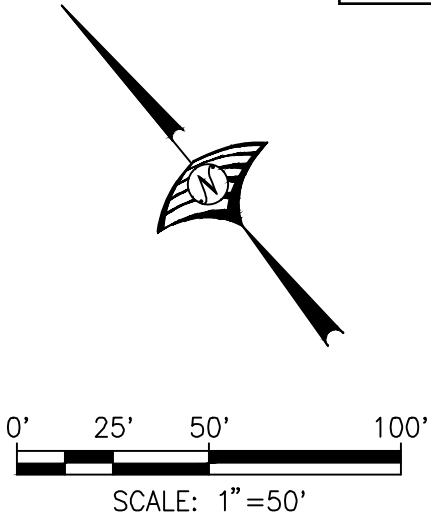
Phone number: _____ Email: _____

Please submit the Operation and Maintenance Inspection reports, Maintenance Plan, and Inspection and Maintenance checklist for each BMP to the following address:

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

FIGURE 11
MAINTENANCE EXHIBIT
1992 TAROB COURT

MILPITAS CALIFORNIA
AUGUST 2020



LEGEND

- PROJECT BOUNDARY
- BIORETENTION AREA
- PERVIOUS PAVERS
- DRAIN INLET
- TREATMENT MEASURE NUMBER

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

**Bioretention Area Maintenance Plan for
1992 Tarob Court, Milpitas CA 95035
May 2020**

Project Address and Cross Streets: 1992 Tarob Court

Assessor's Parcel No.: 086-036-040

Property Owner: Toll West Coast, LLC

Designated Contact: Kevin Fielding

Phone No: (916) 217-2605

Mailing Address: 6800 Koll Center Pkwy #320, Pleasanton, CA 94566

The property contains nineteen (9) bioretention areas and 1 pervious paver located as described below and as shown in the attached site plan¹.

- **DMA1 (bioretention)** is located North of Building A
- **DMA2 (bioretention)** is located Northeast of Building F (center)
- **DMA3 (bioretention)** is located Southwest of Building D
- **DMA4 (bioretention)** is located Northeast of Building D
- **DMA5 (bioretention)** is located Northeast of Building E
- **DMA6 (bioretention)** is located East of Building G
- **DMA7 (bioretention)** is located Northeast corner of Building H
- **DMA8 (pavers)** is located South of Building H

I. Routine Maintenance Activities

The principal maintenance objective is to prevent sediment buildup and clogging, which reduces pollutant removal efficiency and may lead to bioretention area failure. Routine maintenance activities, and the frequency at which they will be conducted, are shown in Table 1 and Table 2.

Table 1 Routine Maintenance Activities for Bioretention/Planter Box Areas		
No.	Maintenance Task	Frequency of Task
1	Remove obstructions, debris and trash from bioretention area and dispose of properly.	Monthly, or as needed after storm events
2	Inspect bioretention area for ponded water. If ponded water does not drain within 2-3 days, till and replace the surface soil and replant.	Monthly, or as needed after storm events
3	Inspect inlets for channels, soil exposure or other evidence of erosion. Clear obstructions and remove sediment.	Monthly, or as needed after storm events
4	Remove and replace all dead and diseased vegetation.	Twice a year
5	Maintain vegetation and the irrigation system. Prune and weed to keep bioretention area neat and orderly in appearance. Remove and or replace any dead plants.	Twice a year
6	Check that mulch is at appropriate depth (3 inches per soil specifications) and replenish as necessary before wet season begins.	Monthly
7	Inspect the energy dissipation at the inlet to ensure it is functioning adequately, and that there is no scour of the surface mulch.	Annually, before the wet season begins
8	Inspect bioretention area using the attached inspection checklist.	Monthly, or after large storm events, and after removal of accumulated debris or material

Table 2 Routine Maintenance Activities for Pervious Pavers		
No.	Maintenance Task	Frequency of Task
1	Inspect system for obstructions and debris. Clear as necessary.	Once a month for 4-6 months after installation. Annually after this period.
2	Sweep and vacuum surface to clear voids	Every three months

¹ Attached site plan must match the site plan exhibit to Maintenance Agreement.

Bioretention Area Maintenance Plan

Date of Inspection:.

Property Address: _____

Treatment Measure No.:

II. Use of Pesticides

The use of pesticides and quick release fertilizers shall be minimized, _____ and _____ the _____ principles _____ of integrated pest management (IPM) followed:

1. Employ non-chemical controls (biological, physical and cultural controls) before using chemicals to treat a pest problem.
2. Prune plants properly and at the appropriate time of year.
3. Provide adequate irrigation for landscape plants. Do not over water.
4. Limit fertilizer use unless soil testing indicates a deficiency. Slow-release or organic fertilizer is preferable. Check with municipality for specific requirements.
5. Pest control should avoid harming non-target organisms, or negatively affecting air and water quality and public health. Apply chemical controls only when monitoring indicates that preventative and non-chemical methods are not keeping pests below acceptable levels. When pesticides are required, apply the least toxic and the least persistent pesticide that will provide adequate pest control. Do not apply pesticides on a prescheduled basis.
6. Sweep up spilled fertilizer and pesticides. Do not wash away or bury such spills.
7. Do not over apply pesticide. Spray only where the infestation exists. Follow the manufacturer's instructions for mixing and applying materials.
8. Only licensed, trained pesticide applicators shall apply pesticides.
9. Apply pesticides at the appropriate time to maximize their effectiveness and minimize the likelihood of discharging pesticides into runoff. With the exception of pre-emergent pesticides, avoid application if rain is expected.
10. Unwanted/unused pesticides shall be disposed as hazardous waste.

III. Vector Control

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

Santa Clara Valley Vector Control District
 1580 Berger Dr.
 San Jose, California 95112
 Phone: (408) 918-4770 / (800) 675-1155 - Fax: (408) 298-6356
www.sccgov.org/portal/site/vector

IV. Inspections

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

Bioretention Area Inspection and Maintenance Checklist

Property Address: _____

Property Owner: _____

Treatment Measure No.: _____ Date of Inspection: _____ Type of Inspection: Monthly

Pre-Wet Season

After heavy runoff End of Wet Season

Inspector(s): _____

Other: _____

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

Appendix C

Operation and Maintenance Plan – 551 Lundy Place

AUGUST 2020



FIGURE 13

DRAINAGE MANAGEMENT AREA SUMMARY

551 LUNDY PLACE

MILPITAS CALIFORNIA

MAY 2020

DRAINAGE MANAGEMENT AREA (DMA)	BUILDING (SF)	STREET (SF)	PAVERS (SF)	DRIVEWAY & SIDEWALK (SF)	TOTAL IMPERVIOUS (SF)	TOTAL PERVIOUS (SF)	TOTAL DRAINAGE AREA (SF)	PROVIDED TREATMENT AREA (SF)	PONDING DEPTH	TREATMEN T TYPE
DMA 1	23,969	40	5,920	2,971	32,900	6,938	39,838	601	PAVERS – 5” ⁵ BIORETENTION 7”	TCM 1,2&3
DMA 2	18,379	1,259	6,471	4,961	31,070	9,498	40,568	547	PAVERS – 5” ⁵ BIORETENTION 8”	TCM 4&5
DMA 3	3,531	0	0	873	4,404	1,838	6,242	176	5”	TCM 6
DMA 4	16,982	7,699	0	5,498	30,179	11,483	41,662	1,081	8”	TCM 7
DMA 5	5,718	0	0	977	6,695	2,927	9,622	213	3”	TCM 8
DMA 6	3,701	0	0	2,959	6,660	4,124	10,784	255	6”	TCM 9
DMA 7	2,128	5,953	0	1,927	10,008	1,980	11,988	365	4.5”	TCM 10
DMA 8	0	0	1,620	0	1,620	0	1,620	1,620	2” ⁵	TCM 11

NOTES:

- ALL TREATMENT MEASURES AND TECHNICAL REQUIREMENTS FOR THIS PROJECT ARE BASED ON THE SANTA CLARA VALLEY URBAN RUNOFF POLLUTION PREVENTION PROGRAM (SCVURPPP) C.3. STORMWATER HANDBOOK DATED APRIL 2012.
- REQUIRED SURFACE AREA OF THE BIORETENTION FACILITIES ARE SUPPORTED BY USING THE COMBINATION FLOW AND VOLUME METHOD.
- HYDROMODIFICATION IS NOT REQUIRED BECAUSE PROPOSED PROJECT IMPERVIOUS SURFACE IS LESS THAN EXISTING IMPERVIOUS SURFACE ON THE SITE.
- REQUIRED SURFACE AREA OF THE PERVIOUS PAVERS IS SUPPORTED BY USING THE WATER QUALITY DESIGN VOLUME 80 PERCENT CAPTURE METHOD ASSUMING A MAXIMUM PONDING DEPTH OF 6 INCHES.

FIGURE 14 STORMWATER TREATMENT DETAILS 551 LUNDY PLACE

MILPITAS

CALIFORNIA

AUGUST 2020

*6" MIN TO 12" MAX
SEE FIGURE 13 FOR EXACT
DEPTH OF EACH TCM

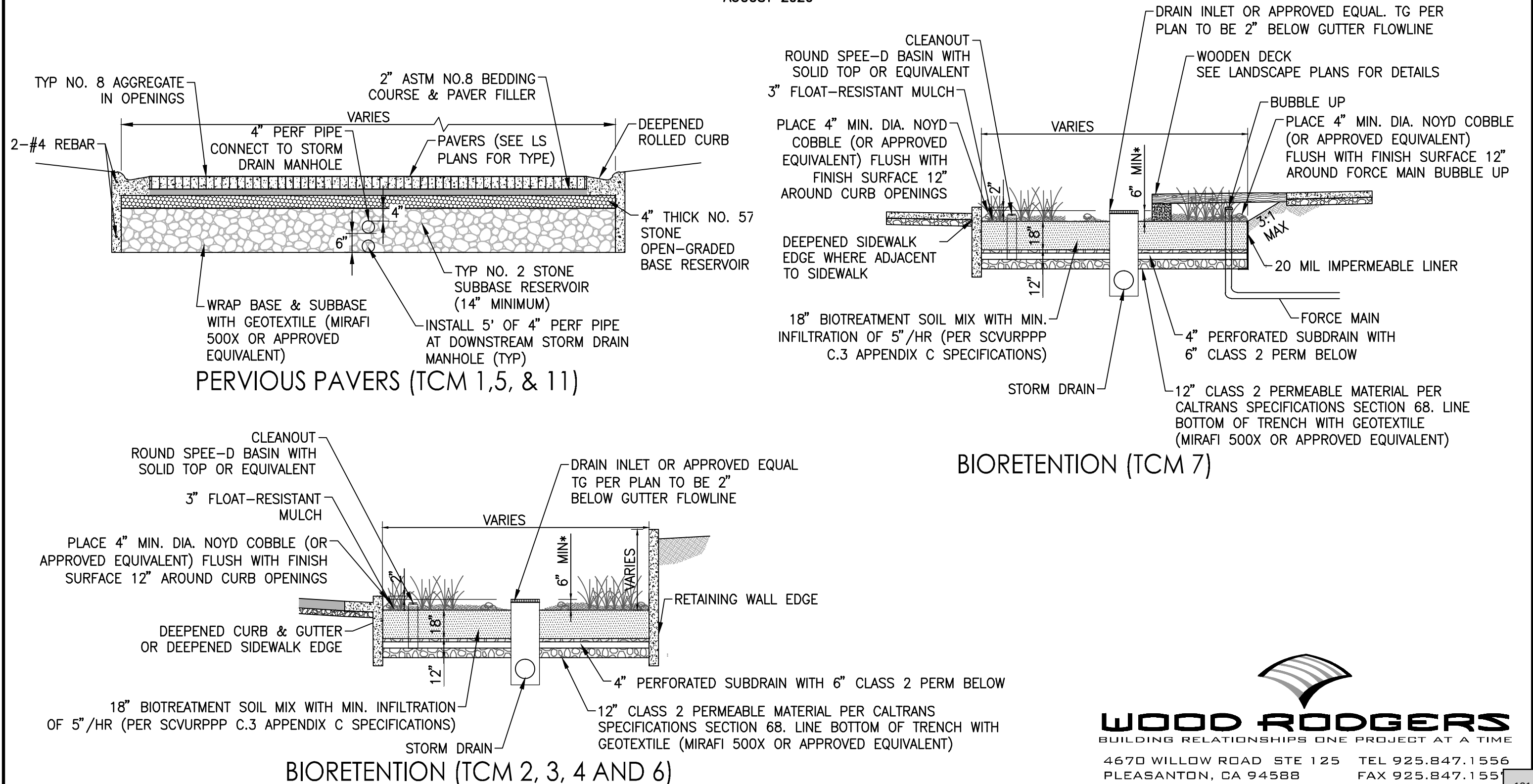


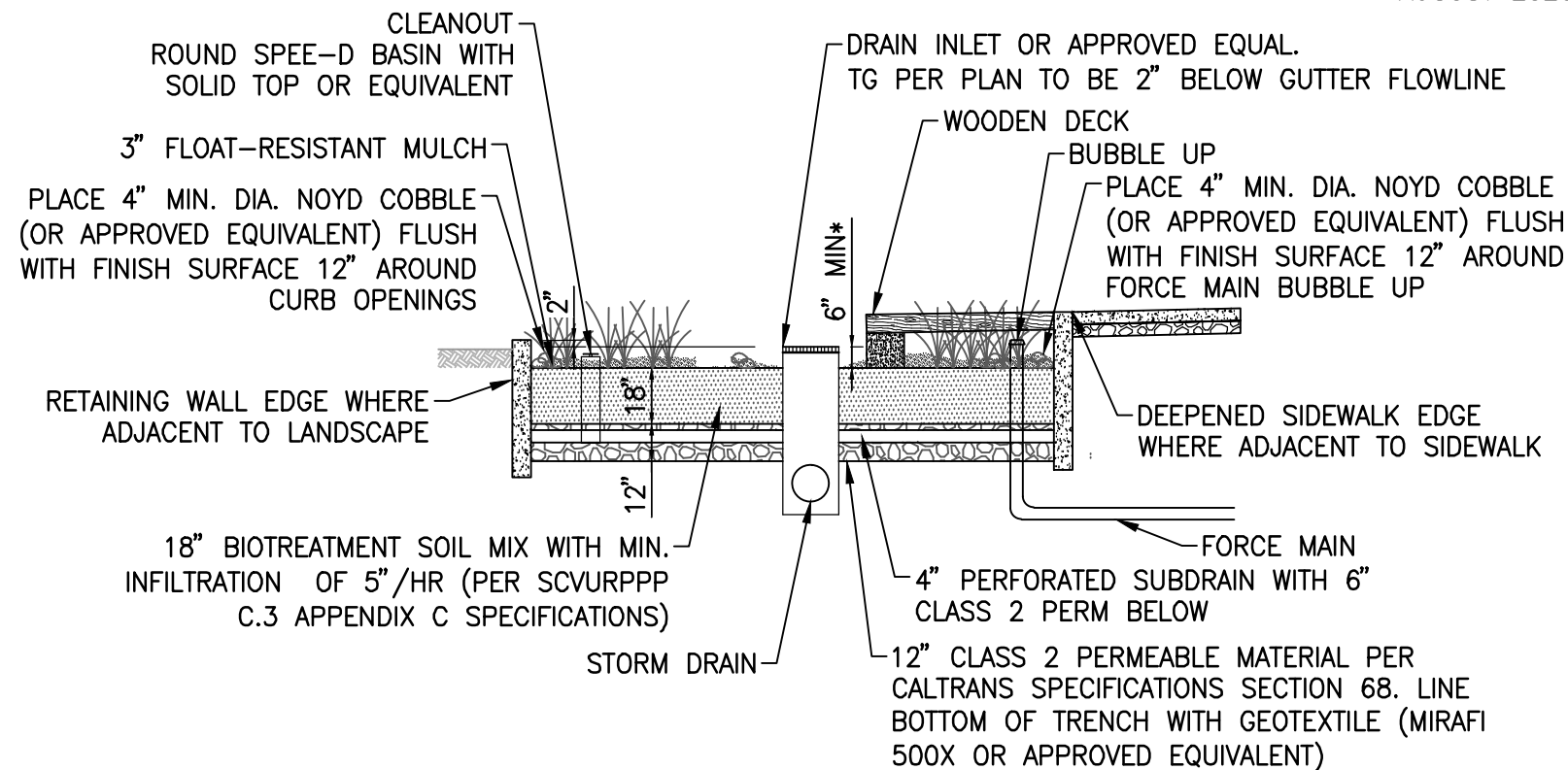
FIGURE 15 STORMWATER TREATMENT DETAILS 551 LUNDY PLACE

MILPITAS

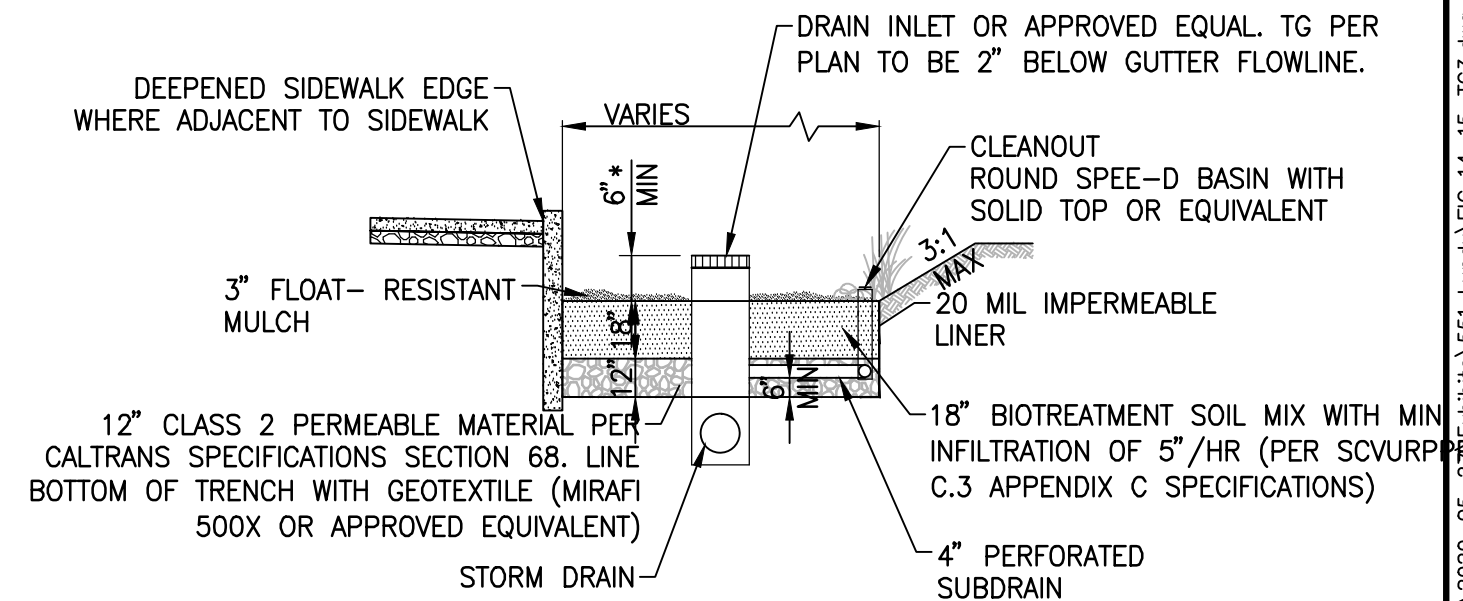
CALIFORNIA

AUGUST 2020

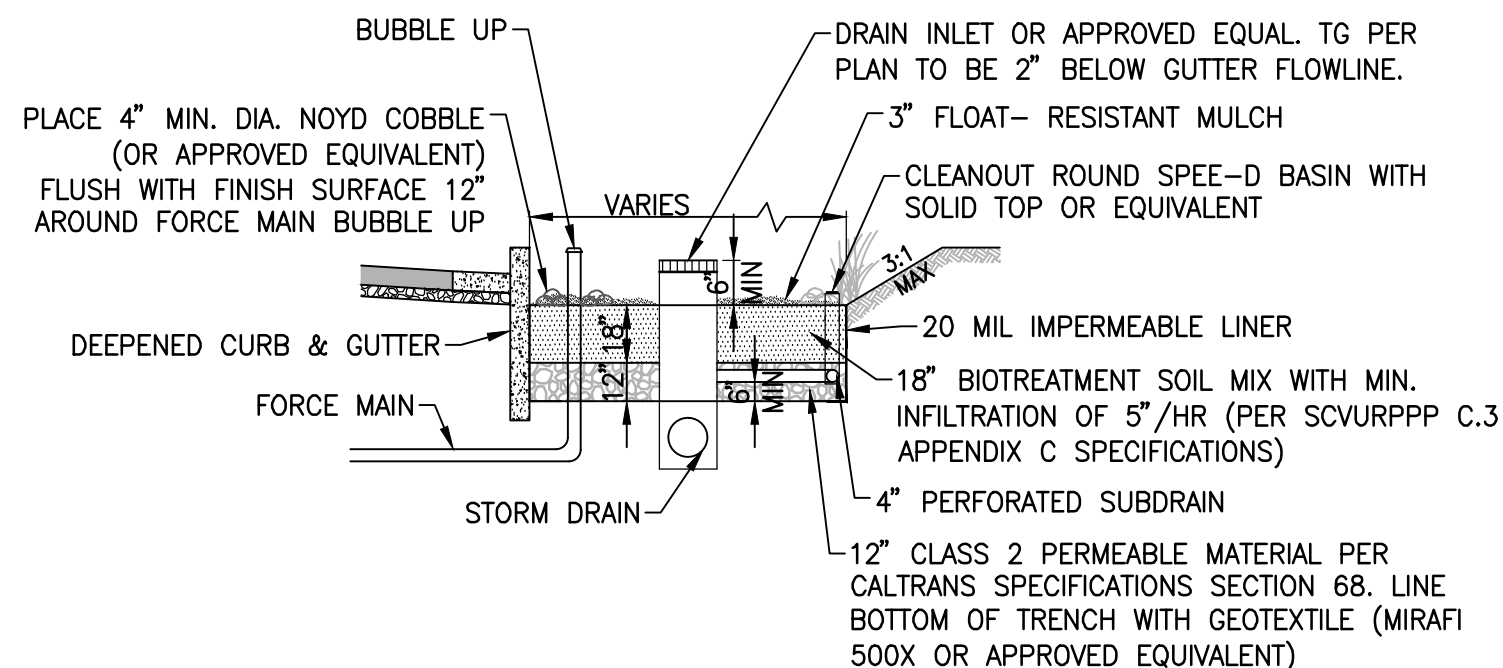
*6" MIN TO 12" MAX
SEE FIGURE 13 FOR EXACT
DEPTH OF EACH TCM



BIORETENTION (TCM 8)



BIORETENTION (TCM 9)



BIORETENTION (TCM 10)

Stormwater Treatment Measure Operation and Maintenance Inspection Report to the City of Milpitas, California

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

I. Property Information:

Property Address or APN: 086-036-038

Property Owner: Toll West Coast, LLC

II. Contact Information:

Name of person to contact regarding this report:

Phone number of contact person: Kevin Fielding Email: kfielding@tollbrothers.com

Address to which correspondence regarding this report should be directed:

6800 Koll Center Pkwy #320, Pleasanton, CA 94566

III. Reporting Period:

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

IV. Stormwater Treatment Measure Information:

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

Identifying Number of Treatment Measure	Type of Treatment Measure	Location of Treatment Measure on the Property
1	Pervious Pavers	Northwest of Buildings A & B
2	Bioretention	West of Building A
3	Bioretention	West of Building M
4	Bioretention	West of Building J
5	Pervious Pavers	Northwest of Buildings J & K
6	Bioretention	West of Building I
7	Bioretention	Northwest of Building I
8	Bioretention	East of Building G
9	Bioretention	Northwest of Building C
10	Bioretention	Northeast of Building C
11	Pervious Pavers	Northwest of Building I

V. Summary of Inspections and Maintenance: Summarize the following information using the attached Inspection and Maintenance Checklists:

Identifying Number of Treatment Measure	Date of Inspection	Operation and Maintenance Activities Performed and Date(s) Conducted	Additional Comments
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			

VI. Sediment Removal:

Total amount of accumulated sediment removed from the stormwater treatment measure(s) during the reporting period: _____ cubic yards.
How was sediment disposed?

- ☐ landfill
- ☐ other location on-site as described in and allowed by the maintenance plan
- ☐ other, explain

VII. Inspector Information:

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

Inspector Name and Title	Inspector's Employer and Address

VIII. Certification:

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

Signature of Property Owner or Other Responsible Party Date

Type or Print Name

Company Name

Address: _____

Phone number: _____ Email: _____

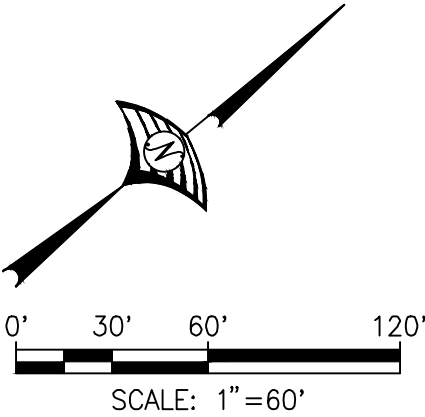
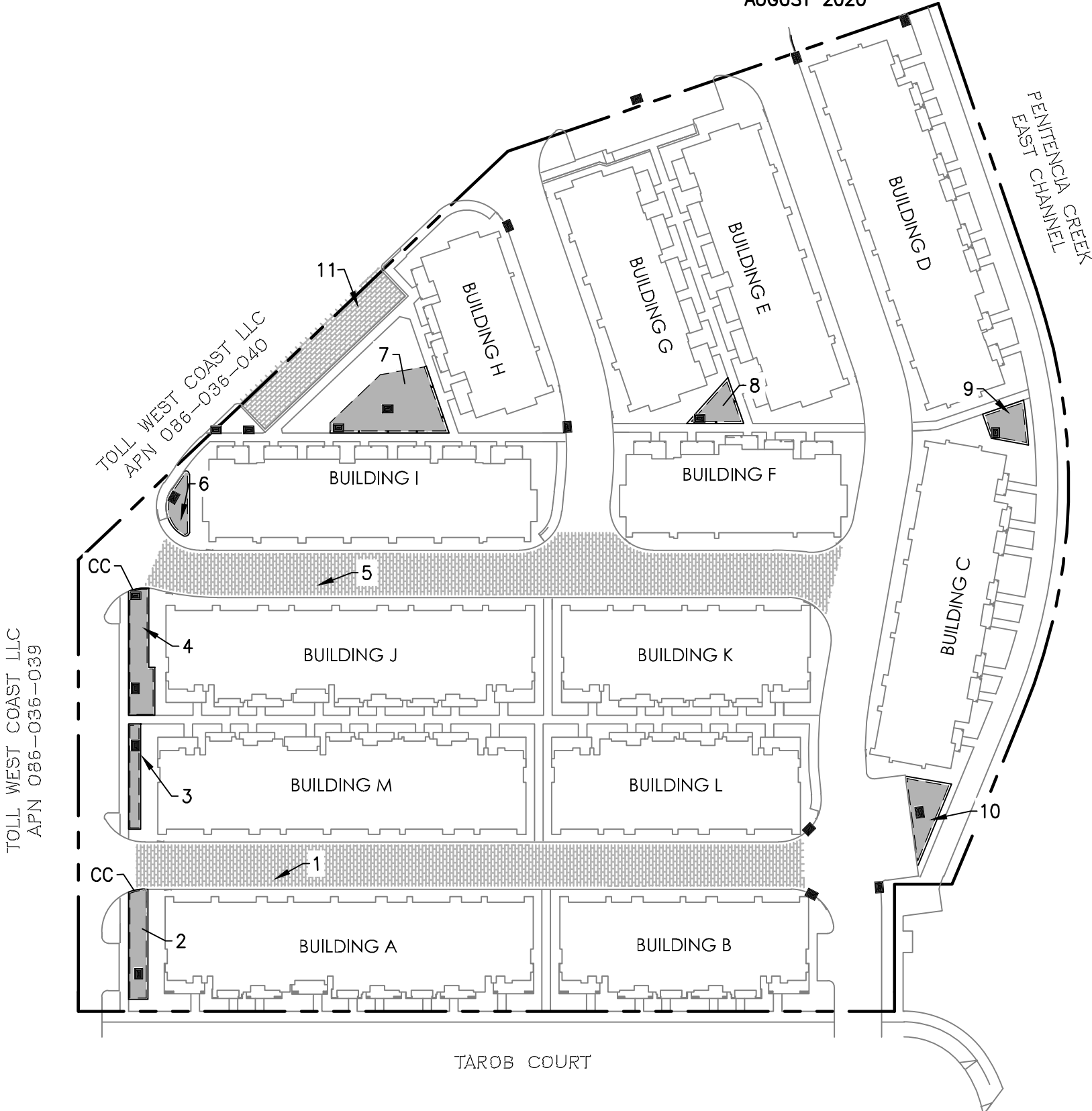
Please submit the Operation and Maintenance Inspection reports, Maintenance Plan, and Inspection and Maintenance checklist for each BMP to the following address:

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

FIGURE 16
MAINTENANCE EXHIBIT
551 LUNDY PLACE

MILPITAS CALIFORNIA

AUGUST 2020



LEGEND	
	PROJECT BOUNDARY
	BIORETENTION AREA
	PERVIOUS PAVERS
	DRAIN INLET
	TREATMENT MEASURE NUMBER
	CURB CUT



WOOD RODGERS
BUILDING RELATIONSHIPS ONE PROJECT AT A TIME
4670 WILLOW ROAD STE 125 TEL 925.847.1556
PLEASANTON, CA 94588 FAX 925.847.155

**Bioretention Area Maintenance Plan for
551 Lundy Place, Milpitas CA 95035
May 2020**

Project Address and Cross Streets: 551 Lundy Place

Assessor's Parcel No.: 086-036-038

Property Owner: Toll West Coast, LLC

Designated Contact: Kevin Fielding

Phone No: (916) 217-2605

Mailing Address: 6800 Koll Center Pkwy #320, Pleasanton, CA 94566

The property contains six (5) bioretention areas, two (2) pervious paver and bioretention areas and (1) pervious paver area, located as described below and as shown in the attached site plan¹.

DMA1 (bioretention/pervious pavers) is located on the southeast side of the property and includes Buildings A, B, L, and M and Joshua Tree Circle

DMA2 (bioretention/pervious pavers) is located in the center of the site and includes Buildings J, K, F, and I and A court

DMA3 (bioretention) is located western portion of Building I

DMA4 (bioretention) is located in the norther corner of the site and includes portions of buildings H, G, E, and D

DMA5 (bioretention) is around portions of Buildings E, F and G

DMA6 (bioretention) is located along eastern frontage of the site

DMA7 (bioretention) is located around a portion of Building C and includes a portion of Joshua Tree Circle

DMA8 (pervious pavers) is located along the western corner of the site

I. Routine Maintenance Activities

The principal maintenance objective is to prevent sediment buildup and clogging, which reduces pollutant removal efficiency and may lead to bioretention area failure. Routine maintenance activities, and the frequency at which they will be conducted, are shown in Table 1 and Table 2.

Table 1 Routine Maintenance Activities for Bioretention/Planter Box Areas		
No.	Maintenance Task	Frequency of Task
1	Remove obstructions, debris and trash from bioretention area and dispose of properly.	Monthly, or as needed after storm events
2	Inspect bioretention area for ponded water. If ponded water does not drain within 2-3 days, till and replace the surface soil and replant.	Monthly, or as needed after storm events
3	Inspect inlets for channels, soil exposure or other evidence of erosion. Clear obstructions and remove sediment.	Monthly, or as needed after storm events
4	Remove and replace all dead and diseased vegetation.	Twice a year
5	Maintain vegetation and the irrigation system. Prune and weed to keep bioretention area neat and orderly in appearance. Remove and or replace any dead plants.	Twice a year
6	Check that mulch is at appropriate depth (3 inches per soil specifications) and replenish as necessary before wet season begins.	Monthly
7	Inspect the energy dissipation at the inlet to ensure it is functioning adequately, and that there is no scour of the surface mulch.	Annually, before the wet season begins
8	Inspect bioretention area using the attached inspection checklist.	Monthly, or after large storm events, and after removal of accumulated debris or material

Table 2 Routine Maintenance Activities for Pervious Pavers		
No.	Maintenance Task	Frequency of Task
1	Inspect system for obstructions and debris. Clear as necessary.	Once a month for 4-6 months after installation. Annually after this period.
2	Sweep and vacuum surface to clear voids	Every three months

Bioretention Area Maintenance Plan

Date of Inspection:.

Property Address: _____

Treatment Measure No.:

II. Use of Pesticides

The use of pesticides and quick release fertilizers shall be minimized, _____ and _____ the _____ principles _____ of integrated pest management (IPM) followed:

1. Employ non-chemical controls (biological, physical and cultural controls) before using chemicals to treat a pest problem.
2. Prune plants properly and at the appropriate time of year.
3. Provide adequate irrigation for landscape plants. Do not over water.
4. Limit fertilizer use unless soil testing indicates a deficiency. Slow-release or organic fertilizer is preferable. Check with municipality for specific requirements.
5. Pest control should avoid harming non-target organisms, or negatively affecting air and water quality and public health. Apply chemical controls only when monitoring indicates that preventative and non-chemical methods are not keeping pests below acceptable levels. When pesticides are required, apply the least toxic and the least persistent pesticide that will provide adequate pest control. Do not apply pesticides on a prescheduled basis.
6. Sweep up spilled fertilizer and pesticides. Do not wash away or bury such spills.
7. Do not over apply pesticide. Spray only where the infestation exists. Follow the manufacturer's instructions for mixing and applying materials.
8. Only licensed, trained pesticide applicators shall apply pesticides.
9. Apply pesticides at the appropriate time to maximize their effectiveness and minimize the likelihood of discharging pesticides into runoff. With the exception of pre-emergent pesticides, avoid application if rain is expected.
10. Unwanted/unused pesticides shall be disposed as hazardous waste.

III. Vector Control

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

Santa Clara Valley Vector Control District
 1580 Berger Dr.
 San Jose, California 95112
 Phone: (408) 918-4770 / (800) 675-1155 - Fax: (408) 298-6356
www.sccgov.org/portal/site/vector

IV. Inspections

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

Bioretention Area Inspection and Maintenance Checklist

Property Address: _____

Property Owner: _____

Treatment Measure No.: _____ Date of Inspection: _____ Type of Inspection: Monthly

Pre-Wet Season

After heavy runoff End of Wet Season

Inspector(s): _____

Other: _____

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

Appendix D

3rd Party Certification

CERTIFICATION

The selection, sizing, and design of treatment BMPs and other control measures in this plan meet the requirements of Regional Water Quality Control Board Order 01-119, as amended.

 Owner/Developer Signature

 Date

 Owner/Developer Name and Title

 Telephone Number

 Engineer Signature

 Date

 Engineer Name and Title

 Telephone Number
As-built Certification by Engineer

The Engineer certifies that this Stormwater Management Plan has been built and implemented per the approved Civil Engineer construction plans.

 Owner/Developer Signature

 Date

 Owner/Developer Name and Title

 Telephone Number

 Engineer Signature

 Date

 Engineer Name and Title

 Telephone Number



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve and Authorize the City Manager to Execute the Improvement Agreement with Satpreet Singh Thind and Jaspreet Kaur Thind, for Completion of Offsite Public Improvements Located at 250 Piedmont Road Associated with Site Development Permit (SD19-0004) (Staff Contact: Roberto Alonzo, Principal Civil Engineer, 408-586-3316)
Category:	Consent Calendar-Community Development
Meeting Date:	11/15/2022
	<u>Recommendation:</u> Approve and authorize the City Manager to execute the improvement agreement with Satpreet Singh Thind and Jaspreet Kaur Thind, for completion of offsite public improvements located at 250 Piedmont Road associated with Site Development Permit (SD19-0004).

BACKGROUND:

On August 13, 2020, the Milpitas Planning Zone Administrator approved a Site Development Permit (SD19-0004) for construction of a new 2-story single-family residence on a vacant 0.25-acre lot and associated off-site public improvements located at 250 Piedmont Road, (PROJECT). Offsite public improvements to be constructed with this PROJECT include curb, gutter, sidewalk, street trees, driveways, utility services, extension of existing City sewer main, and other miscellaneous items of work identified on the public improvement plans.

ANALYSIS:

The Developer, Satpreet Singh Thind and Jaspreet Kaur Thind, has agreed to enter into an Improvement Agreement (**Attached**) with the City for construction of required off-site public improvements for this PROJECT which will be accepted, and maintained by the City upon completion. The off-site public improvements will be completed in two phases and both phases are to be completed within 2-years from the date of the Agreement. The completion of the off-site public improvement work will be guaranteed by bonds or similar security to be posted by the Developer in the amounts of \$63,955.00 for Phase 1 and \$7,168.00 for Phase 2. The Engineering Director/City Engineer has reviewed the public improvement plans (2-1371) and recommends the City Council approve the Improvement Agreement to allow for the construction of public improvements to proceed.

POLICY ALTERNATIVE(S):

Alternative 1:

Deny approval of Improvement Agreement for the installation of off-site public improvements for the Project.

Pros: None

Cons: Denying approval of the Improvement Agreement will cause construction of required off-site public improvements to be delayed and will prevent the owner from receiving an occupancy permit from the Building Department.

Reason for Not Recommending: The proposed off-site public improvements will benefit the Project and provide public benefit by extending the existing curb, gutter, sidewalk, and street tree improvements along Piedmont Road south along the Projects frontage. Staff recommends the City Council approve the Improvement Agreement to allow construction of the off-site public improvements for this Project.

FISCAL IMPACT:

The Developer will reimburse the City for costs associated with plan review, permitting, and construction inspection of off-site public improvements to be constructed. The City will have perpetual ownership and maintenance responsibilities for the improvements following construction and acceptance of the project. The Public Works Department provides funding for future maintenance of newly accepted City infrastructure through their operating budget.

California Environmental Quality Act (CEQA):

Approval of the Improvement Agreement implements this project for which CEQA review has already been completed, by the Planning Division, and is categorically exempt from further environmental review pursuant to Section 15303 (C) (New Construction or Conversion of Small Structures) of the California Environmental Quality Act (CEQA) Guidelines.

RECOMMENDATION:

Approve and Authorize the City Manager to Execute the Improvement Agreement with Satpreet Singh Thind and Jaspreet Kaur Thind, for the completion of Offsite Public Improvements Located at 250 Piedmont Road Associated with Site Development Permit (SD19-0004).

Attachment(s):

Improvement Agreement

RECORDING REQUESTED BY:
WHEN RECORDED RETURN TO:

CITY OF MILPITAS
455 EAST CALAVERAS BOULEVARD
MILPITAS, CA 95035-5479
ATTN: ENGINEERING DEPARTMENT

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Exempt from recording fee, per Government Code
Section 6103

CITY OF MILPITAS, CALIFORNIA

By: _____
City Clerk

AGREEMENT FOR COMPLETION OF PUBLIC IMPROVEMENTS

250 PIEDMONT ROAD

between

CITY OF MILPITAS

a California municipal corporation

and

SATPREET SINGH THIND AND JASPREET KAUR THIND

husband and wife as community property with right of survivorship

AGREEMENT FOR COMPLETION OF PUBLIC IMPROVEMENTS

I. PARTIES AND DATE.

This Agreement for the Completion of Public Improvements (“Agreement”) is entered into as of this ____ day of _____, 2022 by and between the City of MILPITAS, a California municipal corporation (“City”) and SATPREET SINGH THIND AND JASPREET KAUR THIND, husband and wife as community property with right of survivorship with its principal office located at 1833 Lee Way, Milpitas, CA 95035 (“Developer”). City and Developer are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as the “Parties.”

II. RECITALS.

A. On April 19, 2019, Developer submitted to City an application for approval of a Site Development Permit (P-SD19-0004) for a new two-story single-family residence on a vacant 0.25-acre lot (the “Project”) for real property located within City, a legal description of which is attached hereto as Exhibit “A” (“Property”).

B. On August 13, 2020, the MILPITAS PLANNING ZONING ADMINISTRATOR conditionally approved Developer’s application for a Site Development Permit (P-SD19-0004) for the Project.

C. Developer has not completed all of the work or made all of the public improvements required by Title X, Chapter 1, Section 8 of City’s municipal code, the conditions of approval for the Project, or other ordinances, resolutions, or policies of City requiring construction of public improvements in conjunction with the development of land.

D. Pursuant to Title X, Chapter 1, Section 8 of City’s municipal code, Developer and City enter into this Agreement for the timely construction and completion of the public improvements and the furnishing of the security therefor, acceptable to the City Engineer and City Attorney, for the Project.

E. Developer’s execution of this Agreement and the provision of the security are made in consideration of City’s approval of the Project.

III. TERMS.

1.0 Effectiveness. This Agreement shall not be effective unless and until the following conditions are satisfied: (a) Developer provides City with security of the type and in the amounts required by this Agreement and (b) Developer executes and records this Agreement in the Recorder's Office of the County of Santa Clara. If the above described conditions are not satisfied, this Agreement shall automatically terminate without need of further action by either City or Developer.

2.0 Public Improvements. Developer shall construct or have constructed at its own cost, expense, and liability all improvements required by City as part of the approval of the Project, including, but not limited to, all grading, roads, paving, curbs and gutters, pathways, storm drains, sanitary sewers, utilities, drainage facilities, traffic controls, landscaping, street lights, and all other required facilities as shown in detail on the plans, profiles, and specifications which have been prepared by or on behalf of Developer for the Project ("Public Improvements") and approved by the City Engineer. Developer shall construct the Public Improvements in two phases: Phase One includes all required Public Improvements located along the Piedmont Road street frontage within City of Milpitas right-of-way ("Phase One"), and Phase Two includes all required Public Improvements located along the Piedmont Road street frontage and within the State of California Department of Water Resources' (DWR) pipeline easement described in the deed recorded July 25, 1967, in Book 7797 of Official Records of Santa Clara County, at pages 23 through 25 ("Phase Two"). Phase One and Phase Two Public Improvements are more specifically described in Exhibit "B," and Exhibit "B-1" which are attached hereto and incorporated herein by this reference, and as shown on City approved Improvement Plan No. 2-1371 on file with the City. Construction of the Public Improvements shall include any transitions and/or other incidental work deemed necessary for drainage or public safety. The Developer shall be responsible for the replacement, relocation, or removal of any component of any wet or dry utility system in conflict with the construction or installation of the Public Improvements. Such replacement, relocation, or removal shall be performed to the complete satisfaction of the City Engineer and the owner of such utility systems. Developer further promises and agrees to provide all equipment, tools, materials, labor, tests, design work, and engineering services necessary or required by City to fully and adequately complete the Public Improvements.

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

2.2 Permits; Notices; Utility Statements. Prior to commencing any work, Developer shall, at its sole cost, expense, and liability, obtain all necessary permits and licenses and give all necessary and incidental notices required for the lawful construction of the Public Improvements and performance of Developer's obligations under this Agreement including obtaining approvals and permits from DWR prior to commencing with phase 2 work within the DWR easement. Developer shall conduct the work in full compliance with the regulations, rules, and other requirements contained in any permit or license issued to Developer. Prior to commencing any work, Developer shall file a written statement with the City Clerk and the City Engineer, signed by Developer and each utility which will provide utility service to the Property,

attesting that Developer has made all deposits legally required by each utility for the extension and provision of utility service to the Property.

2.3 Pre-approval of Plans and Specifications. Developer is prohibited from commencing work on any Public Improvement until all plans and specifications for such Public Improvement have been submitted to and approved by the City Engineer, or his or her designee. Approval by the City Engineer shall not relieve Developer from ensuring that all Public Improvements conform with all other requirements and standards set forth in this Agreement. Developer shall not commence any phase 2 work or work with the DWR easement without first receiving approvals and a permit from DWR.

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

2.5 Standard of Performance. Developer and its contractors, if any, shall perform all work required to construct the Public Improvements under this Agreement in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Developer represents and maintains that it or its contractors shall be skilled in the professional calling necessary to perform the work. Developer warrants that all of its employees and contractors shall have sufficient skill and experience to perform the work assigned to them, and that they shall have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work, and that such licenses, permits, qualifications and approvals shall be maintained throughout the term of this Agreement.

2.6 Alterations to Improvements. The Public Improvements in Exhibit "B" and Exhibit "B-1", as shown on City approved Improvement Plan No. 2-1371 on file with the City, are understood to be only a general designation of the work and improvements to be done, and not a binding description thereof. All work shall be done and improvements made and completed as shown on the approved plans and specifications, including any subsequent alterations thereto as approved by the City Engineer. If during the course of construction and installation of the Public Improvements it is determined that the public interest requires alterations in the Public Improvements, Developer shall undertake such design and construction changes as may be reasonably required by City. Any and all alterations in the plans and specifications and the Public Improvements to be completed may be accomplished without giving prior notice thereof to Developer's surety for this Agreement.

3.0 Maintenance of Public Improvements and Landscaping. City shall not be responsible or liable for the maintenance or care of the Public Improvements until City approves and accepts them. City shall exercise no control over the Public Improvements until accepted by City pursuant to Section 11.0 of this agreement. Any use by any person of the Public Improvements, or any portion thereof, shall be at the sole and exclusive risk of the Developer at

all times prior to City's acceptance of the Public Improvements. Developer shall maintain all Public Improvements in a state of good repair until they are completed by Developer and approved and accepted by City, and until the security for the performance of this Agreement is released. Maintenance shall include, but shall not be limited to, repair of pavement, curbs, gutters, sidewalks, signals, parkways, water mains, and sewers; maintaining all landscaping in a vigorous and thriving condition reasonably acceptable to City; removal of debris from sewers and storm drains; and sweeping, repairing, and maintaining in good and safe condition all streets and street improvements. It shall be Developer's responsibility to initiate all maintenance work, but if it shall fail to do so, it shall promptly perform such maintenance work when notified to do so by City. If Developer fails to properly prosecute its maintenance obligation under this section, City may do all work necessary for such maintenance and the cost thereof shall be the responsibility of Developer and its surety under this Agreement. City shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the Public Improvements or their condition prior to acceptance.

4.0 Construction Schedule. Unless extended pursuant to this Section 4.1 of this Agreement, Developer shall fully and adequately complete or have completed both Phase One and Two Public Improvements within two (2) years of the effective date of this Agreement, unless extended pursuant to Section 4.1. Notwithstanding any extension, Phase Two Public Improvements shall be completed prior to City Building Department issuance of an Occupancy Permit for the new building.

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

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

5.0 Grading. Developer agrees that any and all grading done or to be done in conjunction with construction of the Public Improvements shall conform to all federal, state, and local laws, ordinances, regulations, and other requirements, including City's grading regulations. In order to prevent damage to the Public Improvements by improper drainage or other hazards, the grading shall be completed in accordance with the time schedule for completion of the Public Improvements established by this Agreement, and prior to City's approval and acceptance of the

Public Improvements and release of the Security as set forth in Sections 11.0 and 13.0 et seq. of this Agreement.

6.0 Utilities. Developer shall provide utility services, including water, power, gas, and telephone service to serve each parcel, lot, or unit of land within the Project in accordance with all applicable federal, state, and local laws, rules, and regulations, including, but not limited to, the regulations, schedules and fees of the utilities or agencies providing such services. Except for commercial or industrial properties, Developer shall also provide cable television facilities to serve each parcel, lot, or unit of land in accordance with all applicable federal, state, and local laws, rules, and regulations, including, but not limited to, the requirements of the cable company possessing a valid franchise with City to provide such service within City's jurisdictional limits. All utilities shall be installed underground.

7.0 Fees and Charges. Developer shall, at its sole cost, expense, and liability, pay all fees, charges, and taxes arising out of construction of the Public Improvements, including, but not limited to, all plan check, design review, engineering, inspection, and other service fees, and any impact or connection fees established by City ordinance, resolution, regulation, or policy, or as established by City relative to the Project.

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

9.0 Default; Notice; Remedies.

9.1 Notice. If Developer neglects, refuses, or fails to fulfill or timely complete any obligation, term, or condition of this Agreement, or if City determines there is a violation of any federal, state, or local law, ordinance, regulation, code, standard, or other requirement, City may at any time thereafter declare Developer to be in default or violation of this Agreement and make written demand upon Developer or its surety, or both, to immediately remedy the default or violation ("Notice"). Developer shall substantially commence the work required to remedy the default or violation within ten (10) days of the Notice. If the default or violation constitutes an immediate threat to the public health, safety, or welfare, City may provide the Notice verbally, and Developer shall substantially commence the required work within twenty-four (24) hours thereof. Immediately upon City's issuance of the Notice, Developer and its surety shall be liable to City for all costs of construction and installation of the Public Improvements and all other administrative costs expenses as provided for in Section 10.0 of this Agreement.

9.2 Failure to Remedy; City Action. If the work required to remedy the noticed default or violation is not diligently prosecuted to a completion acceptable to City within the time frame contained in the Notice, City may complete all remaining work, arrange for the completion of all remaining work, and/or conduct such remedial activity as in its sole and absolute discretion it believes is required to remedy the default or violation. All such work or remedial activity shall be at the sole and absolute cost, expense, and liability of Developer and its surety, without the necessity of giving any further notice to Developer or surety. City's right to take such actions shall in no way be limited by the fact that Developer or its surety may have constructed

any, or none of the required or agreed upon Public Improvements at the time of City's demand for performance. In the event City elects to complete or arrange for completion of the remaining work and improvements, City may require all work by Developer or its surety to cease in order to allow adequate coordination by City. Notwithstanding the foregoing, if conditions precedent for reversion to acreage can be met and if the interests of City will not be prejudiced thereby, City may also process a reversion to acreage and thereafter recover from Developer or its surety the full cost and expense incurred.

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

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

11.0 Acceptance of Improvements by City Council; As-Built or Record Drawings. If the Public Improvements are properly completed by Developer and approved by the City Engineer, and if they comply with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements, the City Council shall be authorized to accept the Public Improvements. The City Council may, in its sole and absolute discretion, accept fully completed portions of the Public Improvements prior to such time as all of the Public Improvements are complete and reduce the requirement Security amount pursuant to Section 13.0 *et seq.*, which shall not release or modify Developer's obligation to complete the remainder of the Public Improvements within the time required by this Agreement. Upon the total or partial acceptance of the Public Improvements by City, Developer shall file with the Recorder's Office of the County of Santa Clara a notice of completion for the accepted Public Improvements in accordance with California Civil Code section 9204, at which time the accepted Public Improvements shall become the sole and exclusive property of City without payment therefor. Issuance by City of occupancy permits for any buildings or structures located on the Property shall not be construed in any manner to constitute City's acceptance or approval of any Public Improvements. Notwithstanding the foregoing, City may not accept any Public Improvements unless and until Developer provides one (1) set of "as-built" or record drawings or plans to the City Engineer for all such Public Improvements. The drawings shall be certified and shall reflect the condition of the Public Improvements as constructed, with all changes incorporated therein.

12.0 Warranty and Guarantee. Developer hereby warrants and guarantees all Public Improvements against any defective work or labor done, or defective materials furnished in the performance of this Agreement, including the maintenance of all landscaping within the Property in a vigorous and thriving condition reasonably acceptable to City, for a period of one (1) year following completion of the Public Improvements and acceptance of them by the City Council ("Warranty"). During the Warranty, Developer shall repair, replace, or reconstruct any defective

or otherwise unsatisfactory portion of the Public Improvements, in accordance with the current ordinances, resolutions, regulations, codes, standards, or other requirements of City, and subject to the approval of the City Engineer. All repairs, replacements, or reconstruction during the Warranty shall be at the sole cost, expense, and liability of Developer and its surety. As to any Public Improvements which have been repaired, replaced, or reconstructed during the Warranty, Developer and its surety hereby agree to extend the Warranty for an additional one (1) year period following the City's acceptance of the repaired, replaced, or reconstructed Public Improvements. Nothing herein shall relieve Developer from any other liability it may have under federal, state, or local law to repair, replace, or reconstruct any Public Improvement following expiration of the Warranty or any extension thereof. Developer's warranty obligation under this section shall survive the expiration or termination of this Agreement.

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

13.1 Performance Bond. To guarantee the faithful performance of the Public Improvements and all the provisions of this Agreement, to protect City if Developer is in default as set forth in Section 9.0 et seq. of this Agreement, and to secure Developer's one-year guarantee and warranty of the Public Improvements, including the maintenance of all landscaping in a vigorous and thriving condition, Developer shall provide City a faithful performance bond, as part of the Phase One Public Improvements (Exhibit B) in the total amount of Sixty Three Thousand Nine Hundred and Fifty Five Dollars (\$63,955.00) which sum shall be not less than one hundred percent (100%) of the Estimated Costs for Phase One Improvements. Developer shall provide City a faithful performance bond, as part of the Phase Two Public Improvements (Exhibit B-1) in the total amount of Seven Thousand One Hundred and Sixty Eight Dollars (\$7,168.00) which sum shall be not less than one hundred percent (100%) of the Estimated Costs for Phase Two Improvements.. The City Council may, in its sole and absolute discretion and upon recommendation of the City Engineer, partially release a portion or portions of the security provided under this section as portions of the Public Improvements are completed and accepted by the City Council, provided that Developer is not in default on any provision of this Agreement or condition of approval for the Project, and the total remaining security is not less than twenty-five percent (25%) of the Estimated Costs. All security provided under this section shall be released at the end of the Warranty period, or any extension thereof as provided in Section 12.0 of this Agreement, provided that Developer is not in default on any provision of this Agreement or condition of approval for the Project.

13.2 Labor & Material Bond. To secure payment to the contractors, subcontractors, laborers, material men, and other persons furnishing labor, materials, or equipment for performance of the Public Improvements and this Agreement, Developer shall provide City a labor and materials bond, as part of the Phase One Public Improvements in the total amount of

Sixty Three Thousand Nine Hundred and Fifty Five Dollars (\$63,955.00) (Exhibit B) which sum shall not be less than one hundred percent (100%) of the Estimated Costs of Phase One Improvements. Developer shall provide City a labor and materials bond, as part of the Phase Two Public Improvements (Exhibit B-1) in the total amount of Seven Thousand One Hundred and Sixty Eight Dollars (\$7,168.00) which sum shall not be less than one hundred percent (100%) of the Estimated Costs for Phase Two Improvements. The security provided under this section may be released by written authorization of the City Engineer after six (6) months from the date City accepts the final Public Improvements. The amount of such security shall be reduced by the total of all stop notice or mechanic's lien claims of which City is aware, plus an amount equal to twenty percent (20%) of such claims for reimbursement of City's anticipated administrative and legal expenses arising out of such claims.

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

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

14.0 RESERVED.

15.0 RESERVED.

16.0 Indemnification. Developer shall defend, indemnify, and hold harmless City, its elected officials, officers, employees, and agents from any and all actual or alleged claims, demands, causes of action, liability, loss, damage, or injury, to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any federal, state, or local governmental body or agency, arising out of or incident to any acts, omissions, negligence, or willful misconduct of Developer, its personnel, employees, agents, or contractors in connection with or arising out of construction or maintenance of the Public Improvements, or performance of this Agreement. This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys fees, and related costs or expenses, and the reimbursement of City, its elected officials, officers, employees, and/or agents for all legal expenses and costs incurred by each of them. This indemnification excludes only such portion of any claim, demand, cause of action, liability, loss, damage, penalty, fine, or injury, to property or persons, including wrongful death, which is caused solely and exclusively by the negligence or willful misconduct of Agency as determined by a court or administrative body of competent jurisdiction. Developer's obligation to indemnify shall survive the expiration or termination of

this Agreement, and shall not be restricted to insurance proceeds, if any, received by City, its elected officials, officers, employees, or agents.

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

17.0 Insurance.

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

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

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

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

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

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

guarantee satisfactory to City guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

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

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

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

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

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

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

19.0 Relationship Between the Parties. The Parties hereby mutually agree that neither this Agreement nor any other related entitlement, permit, or approval issued by City for the Property shall operate to create the relationship of partnership, joint venture, or agency between City and Developer. Developer's contractors and subcontractors are exclusively and solely under the control and dominion of Developer. Nothing herein shall be deemed to make Developer or its contractors an agent or contractor of City.

20.0 General Provisions.

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

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

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

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

CITY OF MILPITAS
455 East Calaveras Boulevard
 Milpitas, CA 95035
 Attn: Steven Erickson, PE
 Director of Engineering/City Engineer

DEVELOPER: Satpreet & Jaspreet Thind
1833 Lee Way
 Milpitas, CA 95035

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

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

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

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

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

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

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

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

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

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

City of Milpitas,
a California municipal corporation

Satpreet Singh Thind and Jaspreet Kaur Thind,
husband and wife as community property with
right of survivorship

By: _____

Name: Steve McHarris

Title: City Manager

By: Satpreet S. Thind

Name: Satpreet Singh Thind

Title: Owner

APPROVED AS TO FORM:

By: Jaspreet K. Thind

Name: Jaspreet Kaur Thind

Title: Owner

Michael Mutalipassi
City Attorney

APPROVED AS TO CONTENT:

Lauren Lai, CPA, MPA
Finance Director / Risk Manager

APPROVED AS TO SUFFICIENCY:

Steven Erickson
Engineering Director / City Engineer

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

CALIFORNIA ACKNOWLEDGMENT**CIVIL CODE § 1189**

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

State of California

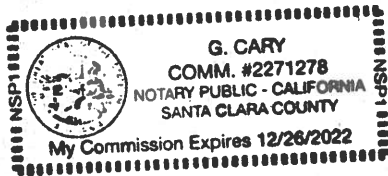
County of Santa Clara }On Oct. 28, 2022

G. Cary, Notary Public

before me, _____
Date Here Insert Name and Title of the Officerpersonally appeared Satpreet S Thind, Jaspreet K. Thind

Name(s) of Signer(s)

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



Place Notary Seal and/or Stamp Above

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

WITNESS my hand and official seal.

Signature

Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached DocumentTitle or Type of Document: Agreement for completion of publicDocument Date: Oct. 28, 2022

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer – Title(s): _____☐ Partner – ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer is Representing: _____

Signer's Name: _____

☐ Corporate Officer – Title(s): _____☐ Partner – ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer is Representing: _____

All Capacity Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

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

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

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

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER**DESCRIPTION OF ATTACHED DOCUMENT**

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

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

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY
THIND RESIDENCE

The land referred to is situated in the County of Santa Clara, City of Milpitas, State of California, and is described as follows:

A portion of Lot 70, Tract 5795, as said Lot and Tract are shown on that certain Map filed in the Office of the County Recorder of Santa Clara County, California, on June 24, 1976, and recorded in Book 373 of Maps, at Pages 42 and 43, and more particularly described by metes and bounds as follows:

Beginning at the most Westerly corner of said Lot 70, which is also the most Southerly corner of Tract 6590, as said Tract is shown on that certain Map filed in the Office of the County Recorder of Santa Clara County, California, on November 16, 1979, and recorded in Book 453 of Maps, at Pages 53 and 54; thence from said point of beginning North 75° 29' 50" East along the Northerly line of said Lot 70, a distance of 163.21 feet to an Intersection with the Southwesterly line of Old Piedmont Road, 40 feet wide, and now abandoned; thence South 14° 38' 04" East along said Southwesterly line of Old Piedmont Road (abandoned), a distance of 133.70 feet to an Intersection with the Northeasterly line of Piedmont Road as realigned; thence North 65° 13' 53" West along said Piedmont Road (realigned), a distance of 211.23 feet to the point of beginning, and containing an area of 0.25 05 acres, more or less.

APN: 092-37-024

EXHIBIT “B”
LIST OF PHASE ONE PUBLIC IMPROVEMENTS
THIND RESIDENCE

EXHIBIT "B"

ENGINEER'S ESTIMATE (onsite grading&offsite improvement)

250 Piedmont Road Milpitas

from station 1+07.77 to 3+00 (Aqueduct easement frontage

CONSTRUCTION COST ESTIMATE

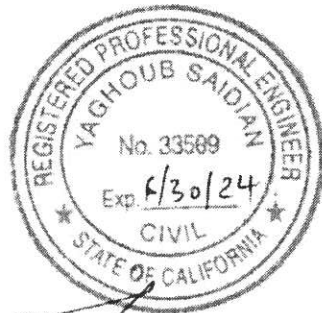
[illegible]

EXHIBIT “B-1”
LIST OF PHASE TWO PUBLIC IMPROVEMENTS
THIND RESIDENCE

EXHIBIT "B-1"

ENGINEER'S ESTIMATE (onsite grading&offsite improvement)

250 Piedmont Road Milpitas

from station 3+00 to 3+39)Aqueduct easement frontage frontag

CONSTRUCTION COST ESTIMATE

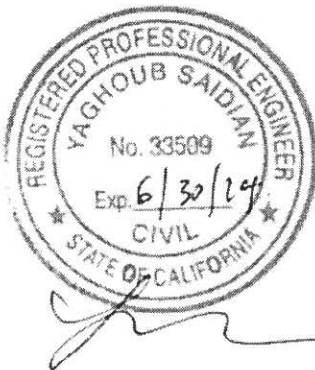
[illegible]

EXHIBIT "C"

SURETY BONDS AND OTHER SECURITY

THIND RESIDENCE

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

PHASE 1:

PERFORMANCE BOND PRINCIPAL AMOUNT: \$63,955.00

Surety: _____

Attorney-in-fact: _____

Address: _____

MATERIAL AND LABOR BOND PRINCIPAL AMOUNT: \$63,955.00

Surety: _____

Attorney-in-fact: _____

Address: _____

PHASE 2:

PERFORMANCE BOND PRINCIPAL AMOUNT: \$7,168.00

Surety: _____

Attorney-in-fact: _____

Address: _____

MATERIAL AND LABOR BOND PRINCIPAL AMOUNT: \$7,168.00

Surety: _____

Attorney-in-fact: _____

Address: _____

Premium Subject to Adjustment Based
On Final Contract Price

BOND NO. 100692967
INITIAL PREMIUM: 1,279.00 / Annum
SUBJECT TO RENEWAL

CITY OF MILPITAS
THIND RESIDENCE IMPROVEMENTS
PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS the City of MILPITAS, California ("City") and SATPREET SINGH THIND AND JASPREET KAUR THIND, husband and wife as community property with right of survivorship ("Principal"), have executed an agreement for work consisting of, but not limited to, the furnishing all labor, materials, tools, equipment, services, and incidentals for all grading, roads, paving, curbs and gutters, pathways, storm drains, sanitary sewers, utilities, drainage facilities, traffic controls, landscaping, street lights, and all other required facilities for Thind Residence ("Phase One Public Improvements");

WHEREAS, the Phase One Public Improvements to be performed by Principal are more particularly set forth in that certain Agreement for Completion of Pubic Improvements dated _____, 2022 ("Improvement Agreement");

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

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

NOW, THEREFORE, Principal and American Contractors Indemnity Company ("Surety"), a corporation organized and existing under the laws of the State of California, and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto City in the sum of Sixty Three Thousand Nine Hundred Fifty Five Dollars (\$63,955.00), said sum being not less than one hundred percent (100%) of the total cost of the Phase One Public Improvements as set forth in the Improvement Agreement, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such, that if Principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, agreements, guarantees, and warranties in the Improvement Agreement and any alteration thereof made as therein provided, to be kept and performed at the time and in the manner therein specified and in all respects according to their intent and meaning, and to indemnify and save harmless City, its officers, employees, and agents,

as stipulated in the Improvement Agreement, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

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

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Improvement Agreement, or to any plans, profiles, and specifications related thereto, or to the Phase One Public Improvements to be constructed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition.

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

IN WITNESS WHEREOF, the seal and signature of the Principal is hereto affixed, and the corporate seal and the name of the Surety is hereto affixed and attested by its duly authorized Attorney-in-Fact at October, this 18th day of 2022,

(Corporate Seal)

Satpreet Singh Thind & Jaspreet Kaur Thind

Principal

By Satpreet Singh Thind

Title Principal

By Jaspreet Kaur Thind

Title Principal

(Corporate Seal)

American Contractors Indemnity Company

Surety

By Freddy Anvari

Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title Attorney-in-Fact

The rate of premium on this bond is \$20.00 per thousand. The total amount of premium charges is \$ 1,279.00 / Annum.
(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety)

American Contractors Indemnity Company

1 MacArthur Place, Suite 550

Santa Ana, CA 92707

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

BayShield Insurance Services

19200 Von Karman Ave 4th floor

Irvine, CA 92612

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

(888) 234-8445

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California

County of Santa Clara }On Oct. 28, 2022

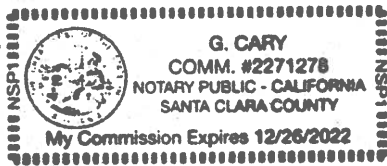
before me,

G. Cary, Notary Public

Date

*Here Insert Name and Title of the Officer*personally appeared Satpreet S Thind, Jaspreet K. Thind*Name(s) of Signer(s)*

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



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

WITNESS my hand and official seal.

Signature

Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached DocumentTitle or Type of Document: City of Milpitas/ Bond No. 100692967Document Date: Oct. 28, 2022

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer – Title(s): _____☐ Partner – ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer is Representing: _____

Signer's Name: _____

☐ Corporate Officer – Title(s): _____☐ Partner – ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California)
County of Orange)

On 10/18/22 before me, Angela Kim, Notary Public
Date Here Insert Name and Title of the Officer
 personally appeared Freddy Anvari
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public _____



Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: Bond# 100692967 Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Freddy Anvari

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

Signer Is Representing: _____

Signer's Name: _____

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

Signer Is Representing: _____



TOKIO MARINE
HCC

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That American Contractors Indemnity Company of the State of California, a California corporation, does hereby appoint,

FREDDY ANVARI

its true and lawful Attorney-in-Fact, with full authority to execute on its behalf bond number 100692967, issued in the course of its business and to bind the Company thereby, in an amount not to exceed One hundred thousand and 00/100 (\$100,000.00).

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following resolutions adopted by the Board of Directors of AMERICAN CONTRACTORS INDEMNITY COMPANY at a meeting duly called and held on the 1st day of September, 2011.

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

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

Be it Resolved, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached."

The Attorney-in-Fact named above may be an agent or a broker of the Company. The granting of this Power of Attorney is specific to this bond and does not indicate whether the Attorney-in-Fact is or is not an appointed agent of the Company.

IN WITNESS WHEREOF, American Contractors Indemnity Company has caused its seal to be affixed hereto and executed by its President on this 18th day of April, 2022.

State of California
County of Los Angeles



AMERICAN CONTRACTORS INDEMNITY COMPANY

By: _____

Adam S. Pessin
Adam S. Pessin, President

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

On this 18th day of April, 2022, before me, Sonia O. Carrejo, a notary public, personally appeared Adam S. Pessin, President of American Contractors Indemnity Company, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

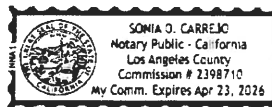
I certify under PENALTY OF PERJURY under the laws of the State of CALIFORNIA that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

Sonia O. Carrejo

(seal)

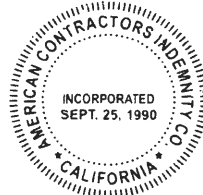


I, Kio Lo, Assistant Secretary of American Contractors Indemnity Company, do hereby certify that the Power of Attorney and the resolution adopted by the Board of Directors of said Company as set forth above, are true and correct transcripts thereof and that neither the said Power of Attorney nor the resolution have been revoked and they are now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of October, 2022.

Bond No. 100692967

Agency No. 700227



Kio Lo
Kio Lo, Assistant Secretary

visit tmhcc.com/surety for more information

HCCSOZZPOAACIC04/2022

Premium Subject to Adjustment Based
On Final Contract Price

BOND NO. 100692967
INITIAL PREMIUM: Premium: Included in Performance Bond
SUBJECT TO RENEWAL

CITY OF MILPITAS
THIND RESIDENCE IMPROVEMENTS
LABOR AND MATERIAL BOND

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS the City of MILPITAS, California ("City") and SATPREET SINGH THIND AND JASPREET KAUR THIND, husband and wife as community property with right of survivorship ("Principal"), have executed an agreement for work consisting of, but not limited to, the furnishing all labor, materials, tools, equipment, services, and incidentals for all grading, roads, paving, curbs and gutters, pathways, storm drains, sanitary sewers, utilities, drainage facilities, traffic controls, landscaping, street lights, and all other required facilities for Thind Residence ("Phase One Public Improvements");

WHEREAS, the Phase One Public Improvements to be performed by Principal are more particularly set forth in that certain Agreement for Completion of Pubic Improvements dated _____, 2022 ("Improvement Agreement");

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

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

NOW, THEREFORE, Principal and American Contractors Indemnity Company ("Surety"), a corporation organized and existing under the laws of the State of California, and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto City and to any and all contractors, subcontractors, material suppliers, persons, companies or corporations furnishing materials, provisions, and other supplies used in, upon, for or about the performance of the Phase One Public Improvements, and all persons, companies or corporations renting or hiring teams, or implements or machinery, for or contributing to the Public Improvements to be done, and all persons performing work or labor upon the same and all persons supplying both work and materials as aforesaid excepting the Principal, the sum of Sixty Three Thousand Nine Hundred Fifty Five Dollars, (\$63,955.00), said sum being not less than 100% of

the total cost of the Phase One Public Improvements under the terms of the Improvement Agreement, we bind ourselves, our heirs, executors and administrators, successors and assigns jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal, his or its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provisions, or other supplies or machinery used in, upon, for or about the performance of the Phase One Public Improvements, or for work or labor thereon of any kind, or fail to pay any of the persons named herein, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and his subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, and all other applicable laws of the State of California and rules and regulations of its agencies, then said Surety will pay the same in or to an amount not exceeding the sum specified herein.

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

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

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Improvement Agreement, or to any plans, profiles, and specifications related thereto, or to the Phase One Public Improvements to be constructed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition.

IN WITNESS WHEREOF, the seal and signature of the Principal is hereto affixed, and the corporate seal and the name of the Surety is hereto affixed and attested by its duly authorized Attorney-in-Fact at October, this 18th day of 2022,

(Corporate Seal)

Satpreet Singh Thind & Jaspreet Kaur Thind

Principal

By Satpreet S. Thind
Satpreet Singh Thind

Title Principal

By Jaspreet K. Thind
Jaspreet Kaur Thind

Title Principal

(Corporate Seal)

American Contractors Indemnity Company

Surety

By [Signature]
Attorney-in-Fact Freddy Anvari

(Attach Attorney-in-Fact Certificate)

Title Attorney-in-Fact

The rate of premium on this bond is NA per thousand. The total amount of premium charges is \$ Premium: Included in Performance Bond.
(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety)

American Contractors Indemnity Company

1 MacArthur Place, Suite 550

Santa Ana, CA 92707

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

BayShield Insurance Services

19200 Von Karman Ave 4th floor

Irvine, CA 92612

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

(888) 234-8445

CALIFORNIA ACKNOWLEDGMENT

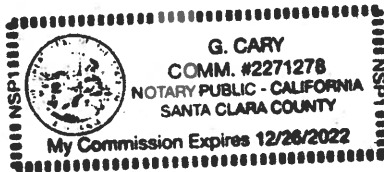
CIVIL CODE § 1189

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

State of California
County of Santa Clara }

On Oct. 28, 2022 before me, G. Cary, Notary Public,
Date Here Insert Name and Title of the Officer
personally appeared Satpreet S Thind, Jaspreet K. Thind
Name(s) of Signer(s)

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



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

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp Above

Signature

Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: City of Milpitas/ Bond No. 100692967

Document Date: Oct. 28, 2022 Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer is Representing: _____

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer is Representing: _____

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

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

State of California)
 County of Orange)

On 10/18/22 before me, Angela Kim, Notary Public,
Date Here Insert Name and Title of the Officer
 personally appeared Freddy Anvari
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Signature [Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: Bond# 100692967 Document Date: _____
 Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

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

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



TOKIO MARINE
HCC

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That American Contractors Indemnity Company of the State of California, a California corporation, does hereby appoint,

FREDDY ANVARI

its true and lawful Attorney-in-Fact, with full authority to execute on its behalf bond number 100692967, issued in the course of its business and to bind the Company thereby, in an amount not to exceed One hundred thousand and 00/100 (\$100,000.00).

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following resolutions adopted by the Board of Directors of AMERICAN CONTRACTORS INDEMNITY COMPANY at a meeting duly called and held on the 1st day of September, 2011.

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

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

Be it Resolved, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached."

The Attorney-in-Fact named above may be an agent or a broker of the Company. The granting of this Power of Attorney is specific to this bond and does not indicate whether the Attorney-in-Fact is or is not an appointed agent of the Company.

IN WITNESS WHEREOF, American Contractors Indemnity Company has caused its seal to be affixed hereto and executed by its President on this 18th day of April, 2022.

State of California
County of Los Angeles



AMERICAN CONTRACTORS INDEMNITY COMPANY

By: Adam S. Pessin
Adam S. Pessin, President

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

On this 18th day of April, 2022, before me, Sonia O. Carrejo, a notary public, personally appeared Adam S. Pessin, President of American Contractors Indemnity Company, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

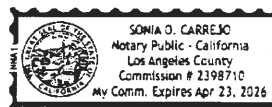
I certify under PENALTY OF PERJURY under the laws of the State of CALIFORNIA that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Sonia O. Carrejo

(seal)



I, Kio Lo, Assistant Secretary of American Contractors Indemnity Company, do hereby certify that the Power of Attorney and the resolution adopted by the Board of Directors of said Company as set forth above, are true and correct transcripts thereof and that neither the said Power of Attorney nor the resolution have been revoked and they are now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of October, 2022.

Bond No. 100692967

Agency No. 700227



Kio Lo
Kio Lo, Assistant Secretary

visit tmhcc.com/surety for more information

HCCSOZZPOAACIC04/2022

Premium Subject to Adjustment Based
On Final Contract Price

BOND NO. 100692958
INITIAL PREMIUM: 300.00 / Annum
SUBJECT TO RENEWAL

CITY OF MILPITAS
THIND RESIDENCE IMPROVEMENTS
PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS the City of MILPITAS, California ("City") and SATPREET SINGH THIND AND JASPREET KAUR THIND, husband and wife as community property with right of survivorship ("Principal"), have executed an agreement for work consisting of, but not limited to, the furnishing all labor, materials, tools, equipment, services, and incidentals for all grading, roads, paving, curbs and gutters, pathways, storm drains, sanitary sewers, utilities, drainage facilities, traffic controls, landscaping, street lights, and all other required facilities for Thind Residence ("Phase Two Public Improvements");

WHEREAS, the Phase Two Public Improvements to be performed by Principal are more particularly set forth in that certain Agreement for Completion of Pubic Improvements dated _____, 2022 ("Improvement Agreement");

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

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

NOW, THEREFORE, Principal and American Contractors Indemnity Company ("Surety"), a corporation organized and existing under the laws of the State of California, and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto City in the sum of Seven Thousand One Hundred Sixty Eight Dollars (\$7,168.00), said sum being not less than one hundred percent (100%) of the total cost of the Phase Two Public Improvements as set forth in the Improvement Agreement, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such, that if Principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, agreements, guarantees, and warranties in the Improvement Agreement and any alteration thereof made as therein provided, to be kept and performed at the time and in the manner therein specified and in all respects according to their intent and meaning, and to indemnify and save harmless City, its officers, employees, and agents,

as stipulated in the Improvement Agreement, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

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

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Improvement Agreement, or to any plans, profiles, and specifications related thereto, or to the Phase Two Public Improvements to be constructed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition.

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

IN WITNESS WHEREOF, the seal and signature of the Principal is hereto affixed, and the corporate seal and the name of the Surety is hereto affixed and attested by its duly authorized Attorney-in-Fact at October, this 18th day of 2022,

(Corporate Seal)

Satpreet Singh Thind & Jaspreet Kaur Thind

Principal

By

Satpreet Singh Thind

Title Principal

By

Jaspreet K. Thind

Title

Principal

(Corporate Seal)

American Contractors Indemnity Company

Surety

By

Freddy Anvari

Title Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

The rate of premium on this bond is \$20.00 per thousand. The total amount of premium charges is \$ 300.00 / Annum.

(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety)

American Contractors Indemnity Company

1 MacArthur Place, Suite 550

Santa Ana, CA 92707

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

BayShield Insurance Services

19200 Von Karman Ave 4th floor

Irvine, CA 92612

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

(888) 234-8445

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California

County of Santa Clara }On Oct. 28, 2022

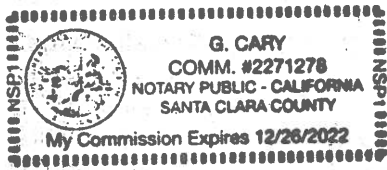
G. Cary, Notary Public

Date

before me, _____
Here Insert Name and Title of the Officerpersonally appeared Satpreet S Thind, Jaspreet K. Thind

Name(s) of Signer(s)

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



Place Notary Seal and/or Stamp Above

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

WITNESS my hand and official seal.

Signature

Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached DocumentTitle or Type of Document: City of Milpitas/ Bond No. 100692958Document Date: Oct. 28, 2022

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer – Title(s): _____☐ Partner – ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer is Representing: _____

Signer's Name: _____

☐ Corporate Officer – Title(s): _____☐ Partner – ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer is Representing: _____

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

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

State of California)

County of Orange)On 10/18/22 before me, Angela Kim, Notary Public,
Date Here Insert Name and Title of the Officerpersonally appeared Freddy Anvari
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Signature [Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

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

Description of Attached DocumentTitle or Type of Document: Bond# 100692958 Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)Signer's Name: Freddy Anvari☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General☐ Individual ☒ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

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

Signer Is Representing: _____



TOKIO MARINE
HCC

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That American Contractors Indemnity Company of the State of California, a California corporation, does hereby appoint,

FREDDY ANVARI

its true and lawful Attorney-in-Fact, with full authority to execute on its behalf bond number 100692958, issued in the course of its business and to bind the Company thereby, in an amount not to exceed One hundred thousand and 00/100 (\$100,000.00).

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following resolutions adopted by the Board of Directors of AMERICAN CONTRACTORS INDEMNITY COMPANY at a meeting duly called and held on the 1st day of September, 2011.

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

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

Be it Resolved, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached."

The Attorney-in-Fact named above may be an agent or a broker of the Company. The granting of this Power of Attorney is specific to this bond and does not indicate whether the Attorney-in-Fact is or is not an appointed agent of the Company.

IN WITNESS WHEREOF, American Contractors Indemnity Company has caused its seal to be affixed hereto and executed by its President on this 18th day of April, 2022.

State of California
County of Los Angeles



AMERICAN CONTRACTORS INDEMNITY COMPANY

By: _____

Adam S. Pessin
Adam S. Pessin, President

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

On this 18th day of April, 2022, before me, Sonia O. Carrejo, a notary public, personally appeared Adam S. Pessin, President of American Contractors Indemnity Company, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

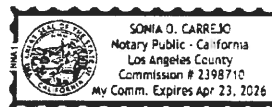
I certify under PENALTY OF PERJURY under the laws of the State of CALIFORNIA that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

Sonia O. Carrejo

(seal)



I, Kio Lo, Assistant Secretary of American Contractors Indemnity Company, do hereby certify that the Power of Attorney and the resolution adopted by the Board of Directors of said Company as set forth above, are true and correct transcripts thereof and that neither the said Power of Attorney nor the resolution have been revoked and they are now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of October, 2022.

Bond No. 100692958

Agency No. 700227



Kio Lo
Kio Lo, Assistant Secretary

visit tmhcc.com/surety for more information

HCCSOZZPOAACIC04/2022

Premium Subject to Adjustment Based
On Final Contract Price

BOND NO. 100692958
INITIAL PREMIUM: Premium: Included in Performance Bond
SUBJECT TO RENEWAL

CITY OF MILPITAS
THIND RESIDENCE IMPROVEMENTS
LABOR AND MATERIAL BOND

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS the City of MILPITAS, California ("City") and SATPREET SINGH THIND AND JASPREET KAUR THIND, husband and wife as community property with right of survivorship ("Principal"), have executed an agreement for work consisting of, but not limited to, the furnishing all labor, materials, tools, equipment, services, and incidentals for all grading, roads, paving, curbs and gutters, pathways, storm drains, sanitary sewers, utilities, drainage facilities, traffic controls, landscaping, street lights, and all other required facilities for Thind Residence ("Phase Two Public Improvements");

WHEREAS, the Phase Two Public Improvements to be performed by Principal are more particularly set forth in that certain Agreement for Completion of Pubic Improvements dated _____, 2022 ("Improvement Agreement");

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

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

NOW, THEREFORE, Principal and American Contractors Indemnity Company ("Surety"), a corporation organized and existing under the laws of the State of California, and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto City and to any and all contractors, subcontractors, material suppliers, persons, companies or corporations furnishing materials, provisions, and other supplies used in, upon, for or about the performance of the Phase Two Public Improvements, and all persons, companies or corporations renting or hiring teams, or implements or machinery, for or contributing to the Public Improvements to be done, and all persons performing work or labor upon the same and all persons supplying both work and materials as aforesaid excepting the Principal, the sum of Seven Thousand One Hundred Sixty Eight Dollars, (\$7,168.00), said sum being not less than 100% of

the total cost of the Phase Two Public Improvements under the terms of the Improvement Agreement, we bind ourselves, our heirs, executors and administrators, successors and assigns jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal, his or its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provisions, or other supplies or machinery used in, upon, for or about the performance of the Phase Two Public Improvements, or for work or labor thereon of any kind, or fail to pay any of the persons named herein, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and his subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, and all other applicable laws of the State of California and rules and regulations of its agencies, then said Surety will pay the same in or to an amount not exceeding the sum specified herein.

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

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

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Improvement Agreement, or to any plans, profiles, and specifications related thereto, or to the Phase Two Public Improvements to be constructed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition.

IN WITNESS WHEREOF, the seal and signature of the Principal is hereto affixed, and the corporate seal and the name of the Surety is hereto affixed and attested by its duly authorized Attorney-in-Fact at October, this 18th day of 2022,

(Corporate Seal)

Satpreet Singh Thind & Jaspreet Kaur Thind

Principal

By Satpreet S. Thind
Satpreet Singh Thind

Title Principal

By Jaspreet K. Thind
Jaspreet Kaur Thind

Title Principal

(Corporate Seal)

American Contractors Indemnity Company

Surety

By [Signature]
Attorney-in-Fact Freddy Anvari

(Attach Attorney-in-Fact Certificate)

Title Attorney-in-Fact

The rate of premium on this bond is NA per thousand. The total amount of premium charges is \$ Premium: Included in Performance Bond.
(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety)

American Contractors Indemnity Company

1 MacArthur Place, Suite 550

Santa Ana, CA 92707

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

BayShield Insurance Services

19200 Von Karman Ave 4th floor

Irvine, CA 92612

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

(888) 234-8445

All Capacity Acknowledgment

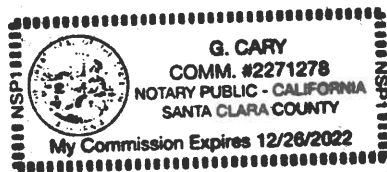
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF Santa Clara

On Oct. 28, 2022, before me, G. Cary, Notary Public, personally appeared Satpreet S. Thind, Jaspreet K. Thind, who proved to me on the basis of satisfactory

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

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



WITNESS my hand and official seal.

G. Cary
Signature of Notary Public

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

- ☐ Individual
☐ Corporate Officer

Title(s)
- ☐ Partner (s) ☐ Limited
☐ General
- ☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

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

DESCRIPTION OF ATTACHED DOCUMENT

City of Milpitas / Bond
#100692958

Title or Type of Document

4
Number of Pages

10-28-2022
Date of Document

Signer(s) Other Than Named Above

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California)

County of Orange)

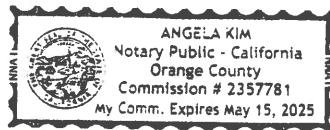
On 10/18/22 before me, Angela Kim, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Freddy Anvari
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Signature _____
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: Bond# 100692958 Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Freddy Anvari

☐ Corporate Officer – Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☒ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

 Signer Is Representing:

Signer's Name:

☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing:



TOKIO MARINE
H C C

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That American Contractors Indemnity Company of the State of California, a California corporation, does hereby appoint,

FREDDY ANVARI

its true and lawful Attorney-in-Fact, with full authority to execute on its behalf bond number 100692958, issued in the course of its business and to bind the Company thereby, in an amount not to exceed One hundred thousand and 00/100 (\$100,000.00).

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following resolutions adopted by the Board of Directors of AMERICAN CONTRACTORS INDEMNITY COMPANY at a meeting duly called and held on the 1st day of September, 2011.

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

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

Be it Resolved, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached."

The Attorney-in-Fact named above may be an agent or a broker of the Company. The granting of this Power of Attorney is specific to this bond and does not indicate whether the Attorney-in-Fact is or is not an appointed agent of the Company.

IN WITNESS WHEREOF, American Contractors Indemnity Company has caused its seal to be affixed hereto and executed by its President on this 18th day of April, 2022.

State of California
County of Los Angeles



AMERICAN CONTRACTORS INDEMNITY COMPANY

By: _____

Adam S. Pessin
Adam S. Pessin, President

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

On this 18th day of April, 2022, before me, Sonia O. Carrejo, a notary public, personally appeared Adam S. Pessin, President of American Contractors Indemnity Company, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____

(seal)



I, Kio Lo, Assistant Secretary of American Contractors Indemnity Company, do hereby certify that the Power of Attorney and the resolution adopted by the Board of Directors of said Company as set forth above, are true and correct transcripts thereof and that neither the said Power of Attorney nor the resolution have been revoked and they are now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of October, 2022.

Bond No. 100692958

Agency No. 700227



Kio Lo
Kio Lo, Assistant Secretary

visit tmhcc.com/surety for more information

HCCSOZZPOAACIC04/2022



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Award and Approve a 5-Year Professional Services Contract with Fireworks and Stage Effects America, LLC for the Annual 4th of July and Annual Lunar New Year's Fireworks Shows for a Not-to-Exceed Amount of \$140,510 (Staff Contact: Renee Lorentzen, Director of Recreation and Community Services, 408-586-3409)
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	11/15/2022
	<u>Recommendation:</u> Award and Authorize the City Manager to Execute the five-year Professional Services Agreement with Fireworks and Stage Effects America, LLC for Annual 4th of July and Annual Lunar New Year Pyrotechnical Services for the not-to-exceed amount of \$140,510.

BACKGROUND:

The City of Milpitas has held a Fourth of July event featuring fireworks for over 30 years. This is the City's largest annual event that has an average of over 12,000 resident and regional attendees. The City of Milpitas has held a Lunar New Year event for 5 years featuring firecrackers. Firecrackers are culturally significant to the popular cultural celebration.

Professional Services Agreements with pyrotechnic professionals are required for the provision of safe displays of fireworks and firecrackers at these two community events.

ANALYSIS:

On August 25, 2022 the City's Purchasing Division released RFP No. 23-019 for Annual 4th of July Shows and Annual Lunar New Year Shows services. The RFP outlined the scope and schedule of each event.

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. OpenGov.com, the City's eProcurement system. Additionally, the RFP was published on the City's website.

Upon release, six firms were notified of the bid opportunity and six firms downloaded the RFP documents. one firm responded to the RFP by the published closing date of September 23, 2022. The bid received was reviewed by Purchasing staff for compliance and responsiveness and was accepted.

The one company that continued in the evaluation process was:

1. Fireworks and Stage Effects America, LLC

The evaluation committee reviewed the proposal based on the following criteria:

1. Cover letter and compliance with RFP requirements
2. Company Profile
3. Execution plan
4. References
5. Safety
6. Proposed Compensation

The proposal was evaluated by three City staff members who comprised the evaluation committee. After compiling preliminary scoring, the top firm, Fireworks and Stage Effects America, LLC, was asked to supply a best and final offer regarding the proposed compensation for all services outlined in the RFP. After evaluation of the revised compensation, the evaluation committee finalized all scoring.

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

Annual 4 th of July and Annual Lunar New Year Shows RFP No. 23-019	Fireworks and Stage Effects America, LLC
Final Evaluation Score	92.17

Fireworks and Stage Effects America, LLC compensation package is for \$27,000 in the first year with a 2% price increase per year applied in years 2 through 5 as follows:

Year 1	\$27,000.00
Year2	\$27,540.00
Year 3	\$28,090.80
Year 4	\$28,652.62
Year 5	\$29,225.69
Total	\$140,509.11

POLICY ALTERNATIVE(S):

Alternative 1: Do not award Project No. 23-019 to Fireworks and Stage Effects America, LLC, for fireworks for Annual 4th of July Fireworks Shows and Annual Lunar New Year's Shows.

Pros: None.

Cons: The City will not have a fireworks and firecracker provider, resulting in not having traditional pyrotechnic displays at either event.

Reason not recommended: The City Council appropriated funds for fireworks for Annual 4th of July Fireworks Shows and Annual Lunar New Year's Shows.

FISCAL IMPACT:

The contract total-not-to-exceed amount is \$140,510, with FY2022-23 funding available in the Recreation and Community Services operating budget. Subsequent year appropriations will be authorized by Council during the annual operating 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 and Authorize the City Manager to Execute the five-year Professional Services Agreement with Fireworks and Stage Effects America, LLC for Annual 4th of July and Annual Lunar New Year Pyrotechnical Services for the not-to-exceed amount of \$140,510 subject to annual appropriation of funds.

Attachment(s):

1. Professional Services Agreement with Fireworks and Stage Effects America, LLC

This Agreement is made and entered into as of _____ (“Effective Date”) by and between the City of Milpitas, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 (“City”), and **Fireworks and Stage Effects America, LLC**, a California limited liability company with its principal place of business at **P. O. Box 488, Lakeside, CA 92040** (hereinafter referred to as “Consultant”). City and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

RECITALS

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

Annual 4th of July Fireworks Shows and Annual Lunar New Year’s Shows
(hereinafter referred to as “the Project”).

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

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

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services.

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

2. Compensation.

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

b. In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of **One Hundred Forty Thousand Five Hundred Nine Dollars and Eleven Cents (\$140,509.11)**. This amount is to cover all printing and related costs, and the City will not pay any additional fees for printing expenses. Periodic payments shall be made within thirty (30) days of receipt of an invoice which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis.

3. Additional Work.

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

4. Maintenance of Records.

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

Item # C12.

5. Term.

The term of this Agreement shall be from **the Date first written above to July 31, 2027**, unless earlier terminated as provided herein. The City reserves the right to review the Consultant's performance at the end of each year and cancel all or part of the Agreement.

6. Delays in Performance.

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

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

7. Compliance with Law.

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

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

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

8. Standard of Care

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

9. Assignment and Subconsultant

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

10. Independent Consultant

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

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

Item # C12.

12. Indemnification.

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

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

13. California Labor Code Requirements.

a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is One Thousand Dollars and Zero Cents (\$1,000.00) or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

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

c. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay.

and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

Item # C12.

14. Verification of Employment Eligibility.

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

15. Laws and Venue.

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

16. Termination or Abandonment

a. City has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event, City shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. City shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by City and Consultant of the portion of such task completed but not paid prior to said termination. City shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

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

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

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

18. Organization

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

19. Limitation of Agreement.

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

20. Notice

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

Item # C12.

CITY:

City of Milpitas

455 E. Calaveras Boulevard

Milpitas, California 95035

Attn: Renee Lorentzen, Director of Recreation
and Community Services

CONSULTANT:

Fireworks & Stage FX America, LLC

P. O. Box 488

Lakeside, CA 92040

Attn: Jim Acker, Sales/Operations Manager

and shall be effective upon receipt thereof.

21. Third Party Rights

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

22. Equal Opportunity Employment.

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

23. Entire Agreement

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

24. Severability

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

25. Successors and Assigns

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

26. Non-Waiver

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

27. Time of Essence

Item # C12.

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

28. City's Right to Employ Other Consultants

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

29. Prohibited Interests

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

30. Wage Theft Prevention

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

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

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

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

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

Item # C12.

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

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MILPITAS
AND FIREWORKS AND STAGE FX AMERICA LLC**

Item # C12.

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

CITY OF MILPITAS

Approved By:

Steven G. McHarris, City Manager

Date

Approved As To Form:

Michael Mutalipassi, City Attorney

Approved:

Lauren Lai, CPA, MPA
Finance Director/Risk manager

Approved As To Content:

Renee Lorentzen, Director of Recreation and
Community Services

**FIREWORKS AND STAGE FX AMERICA
LLC**

Signature

Name

Title

Date

Scope of Services



Section 3

Understanding of the Scope of Work

Fireworks & Stage FX America understands that the scope of work for this RFP is two-fold:

1) 4th of July Celebration

To produce a world-class aerial-fireworks, display for the City of Milpitas for their annual 4th of July celebration(s). These productions are to include show design, musical sound track production, synchronized fireworks choreography, show set-up, show execution (launch) and post-show clean-up. It is understood that each portion of the production will be done while cooperating with the City of Milpitas employees responsible to ensure that the event is conducted in a manner that meets with the City of Milpitas' approval. Fireworks & Stage FX America will provide all materials and personnel to produce the display(s).

2) Lunar New Year celebration

To produce an annual Lunar New Year celebration through the use of a safe, creative and controlled firecracker discharge to entertain the guests of the event. The Lunar New Year celebration will include the safe set-up, execution and clean-up of the firecracker display. Fireworks & Stage FX America will provide all materials and personnel to produce the display(s).

Section 4

Proposed Work Program & Methodology

1. 4th of July Celebration

A) Services provided

- a. Show design: We will work with your staff to understand exactly what sort of look and feel that you would like for your show. This will include music selection, which will help determine the exact pyrotechnic products that we will select to best showcase and take advantage of the music soundtrack.

Your show will include an opening announcement volley of shots, a main body of fireworks featuring all of our highest quality shells choreographed to the music and an exciting and sky-filling Grand Finale’.

Added
Value



Included at no additional charge will be our signature multiple launch point design featuring criss-crossing comets, animated mines and multi-shot barrage devices to thoroughly entertain your audience. The aerial shells will provide 98% or more of the pyrotechnic entertainment, with multi-shot barrages used to fill and provide contrast and additional visual and audible content.

- b. Fireworks choreography: We will provide the services of one of our professional fireworks choreographers to best match the fireworks with the selected music. The choreographer will program the display into one of our state-of-the-art firing computers that will reproduce the choreographer’s design down to 1/100th of a second accuracy.
- c. Fireworks America will provide the City of Milpitas with either an audio CD or synchronized digital audio device to connect to your amplified speaker system for audio playback.
- d. Once choreography is complete, our choreographer will provide the City of Milpitas with a computer-generated video simulation of the fireworks display to show you what your show will actually look like.
- e. Our licensed pyrotechnician and crew will safely set-up the display following all local, state and federal regulations as well as best industry practices. They will supervise the safe launch of the display and clean-up the firing area at the completion of the display.

Added
Value





Section 4

2. Lunar New Year Celebration

A) Product Provided

Fireworks America will provide 900,000 Tao firecrackers using 36 individual stings of firecrackers.

Each string is eight feet (8') long and contains approximately 25,000 Tao.

This will be delivered, set-up and discharged to your specifications.

B) Firing Plan:

Although the City of Milpitas can specify to us exactly how you would like to discharge the firecrackers and we can accommodate your exact requests, to provide for an entertaining and meaningful experience for everyone, we would recommend the following sample plan:

ACT 1:

An appropriately decorated firecracker cage is placed on the lawn or upper sidewalk area and TWO STRINGS are lit inside the firecracker cage. This provides a very safe environment where the firecrackers are closer to the audience to provide a memorable experience without being overpowering or overly obnoxious. This is a traditional method of discharging firecrackers close to the audience without sacrificing safety. Approximate run time: About 1 - 2 minutes.

ACT 2:

Two eight foot (8') tall strings of firecrackers are suspended from ten foot (10') tall poles placed on either side of the stage. The strings are lit simultaneously, and the firecrackers ignited from bottom to top in the traditional manner. This is a very traditional method of displaying firecrackers on Lunar New Year. Approximate run time: 1 – 2 minutes.

ACT 3: (Finale)

The remaining thirty-two firecracker strings are ignited on our custom framework that spans the stage from left to right. We will ignite the outer strings first, two at a time (both left and right)

then progressively ignite the strings moving toward the center. As we approach the center, we progressively ignite multiple strings, to quicken the pace and build the excitement to a loud firecracker-rushing finale. Note: We have improved our firecracker framework to avoid cross-ignition between the strings and to provide better control over pre-mature ignition of all firecracker strings. This gives us a much more refined control of the strings and allows us to ignite the strings with control and precision.
Approximate run time: 2-6 minutes.

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Section 4 (continued)**Clean-up**

Fireworks America will clean-up all debris associated with the firecracker discharge and depart the property leaving it looking the same (or better) than when we arrived.

Example Photos:

Photo shows firecracker rack set-up for 2019 by Fireworks America. Green tarps are placed below firing area to protect sidewalk.





Section 4 (continued)

Photo shows partially loaded firecracker rack.

Note: For 2023, Fireworks America will utilize a slightly taller rack with provisions to avoid cross-ignition between the strings.





Section 4 (continued)

Fireworks America has the following site needs for the 4th of July and Lunar New Year celebrations:

- i. Restroom (portable or otherwise) and handwash facilities for our crew
- ii. Reasonable parking area for crew
- iii. Site security (Audience control) on day of display.



Section 4

Shell Counts & Information 4th of July Celebration display

	Number of Shells	Size	Country Of Origin
Opening Announcement	10	3"	China
Main Body of Show	600	3"	China, Spain, Japan, USA
Multi-shot barrages	2,396	0.75"- 1.25"	China, Spain, Japan, USA
Grand Finale'	330	2.5" - 3.0"	China, Spain, Japan, USA
Total Aerial Shells:	940		
Grand Total All Shots:	3,336		

Show Run Time = Up to 25 minutes +/- 1 minute (Depends on music selection/pace)

Photographs of Fireworks to be used in display

Since fireworks effects are based on motion and transformative effects, please refer to our provided videos for more accurate examples of fireworks shells. We have an inventory of over 300 unique styled 3" aerial shells and simple photographs do not accurately depict their performance. In addition to traditional "flower" shaped shells known as peonies, chrysanthemums and dalias, we also offer shells with descriptions such as screamers, hummers, falling leaves, scattering stars, swimming fish, wasps, brocades, bees, crossettes, waterfalls, willows, coconut trees, waves, strobes, whistles, salutes, tiger tails and many, many more. It would take hundreds of pages to provide accurate photographs of our inventory and the photographs seldom are an accurate depiction of the effects that each shell provides. Please enjoy our provided videos. We have provided your office with a high-capacity USB memory stick containing our videos.



Section 4

Product Counts & Information Lunar New Year Celebration

	Number of Crackers/TAU equivalent	Country Of Origin
Firecrackers	900,000	China

Show Run Time = 4 to 8 minutes of actual “cracker time” depending upon firing pace requested
See suggested show plan above



Section 5

Quality Control & Safety, w/sample plot plan depicting safety zone

Fireworks & Stage FX America prides itself in it's excellent safety record. All personnel are regularly trained in both pyrotechnic best practices and general safety. We follow all Federal, State and Local laws pertaining to fireworks operations and safety and utilize the latest edition of NFPA 1123 "*Code for Fireworks Display*" for the application of best industry practices.

In addition, company management routinely monitors our field crews for quality and safety compliance and works with our licensed pyrotechnicians when we find room for improvement.

When we produce a fireworks display, the first component to our safety plan is contained in our show design and plot plan. All fireworks products are sized and selected to safely fit the venue in which we are working. This is to endure that the fireworks do not damage local property, injure the audience or our personnel. We will create an over-all plot plan that will delineate where each and every pyrotechnic device will be placed and calculate the safe set-back distances to ensure that if anything were to malfunction on a device, any potential effects from that device will not reach the audience. This plot plan will be presented to the local fire department for approval prior to the event.

On the day of event, we will closely examine the site to be sure that our equipment has been properly laid out as per the approved plans. The fireworks are transported to the venue in a DOT approved and properly placarded vehicle, driven by a licensed hazmat certified driver. Once the fireworks products arrives on-site, they will remain locked in the truck until they are loaded into the launch mortars.

The general public is kept out of the launch area any time that fireworks are present.

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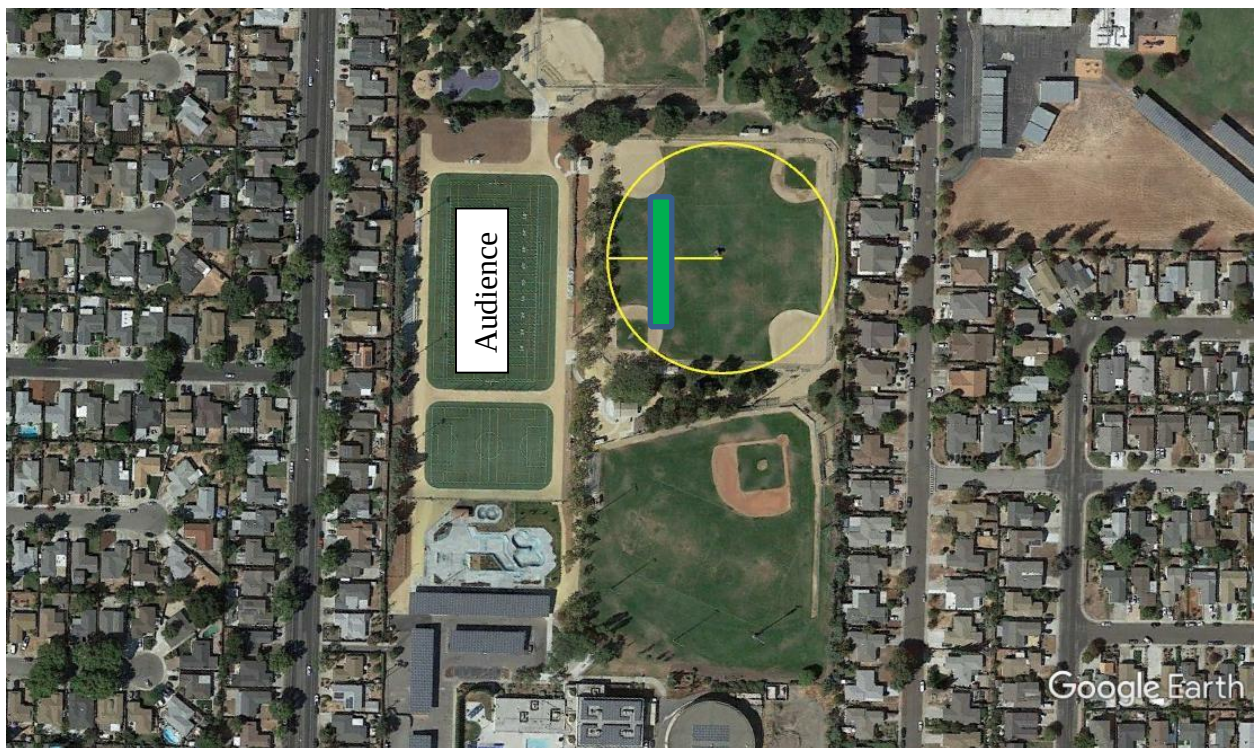
A major component of the safety plan is the safety fallout zone. Prior to shooting the display, we will make sure that the safety/fallout zone is clear of unauthorized persons. Our spotters monitor the area during the show and if any unauthorized persons enter the safety/fallout zone, the show will be paused until they can be removed and the area made safe again. Our spotters are also watching the fireworks fallout for any changes in wind direction or any conditions that might create a hazard. All spotters are in full communications with our licensed shooter, and the show can be paused at any time if needed.

We encourage the fire authority (fire inspector) to position themselves near the fireworks control panel so that they can be in contact with the shooter at all times.

A sample plot plan is attached, with representative safety fallout zone and basic launch point locations. Audience is shown in football field area, but can exist in any areas outside of yellow fallout zone radius.

**Pyrotechnic Plot Plan
Milpitas 4th July Celebration**

Sample plot plan subject to Milpitas Fire Department Approval

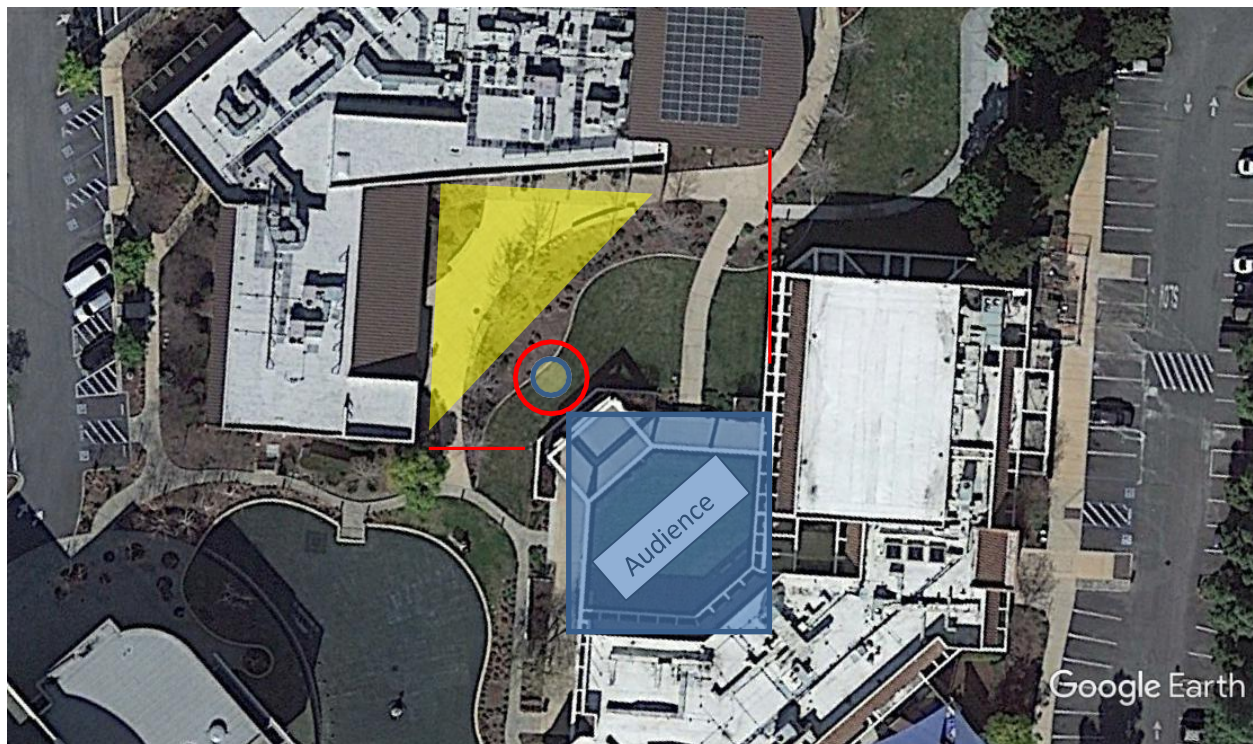


Site notes:

- 1) Yellow circle depicts a safety zone of 220' radius/440' diameter which provides a sufficient fallout zone for up to and including 3" aerial shells. *NFPA 1123*
- 2) Primary launch area will be located in the center of the yellow circle.
- 3) Area indicated by green bar [REDACTED] is for low level multi-shot items and/or comets/mines to provide for multi-location launch points for criss-cross comet effects and other enhanced display items. All devices will be properly set-back from control lines to provide for maximum safety and full compliance with NFPA 1123 and all local/state/federal guidelines and regulations.
- 4) All non-Fireworks America persons and vehicles will be held outside of this yellow circle during the discharge of the display.

**Milpitas Lunar New Year
Celebration**

Sample plot plan subject to Milpitas Fire Department Approval



- 1) Yellow triangle area represents main firecracker staging area. Unauthorized persons will be kept out of this area while firecrackers are set up and during firing of crackers.
- 2) Red line indicates audience control lines.
- 3) Yellow circle area represents proposed “cracker barrel” area for small cracker display, if so desired. If this area is used, a 15’ safety perimeter (audience exclusion area) from the barrel will be maintained as indicated by the red circle. This position is optional and shall be approved by fire department prior to use.
- 4) Blue shaded area indicates primary audience area.

EXHIBIT B

Item # C12.

Schedule of Charges/Payments

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

In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of **One Hundred Forty Thousand Five Hundred Nine Dollars and Eleven Cents (\$140,509.11)**.

Fireworks and Stage Effects America, LLC compensation package is for \$27,000 in the first year with a 2% price increase per year applied in years 2 through 5 as follows:

Year 1	\$27,000.00
Year2	\$27,540.00
Year 3	\$28,090.80
Year 4	\$28,652.62
Year 5	\$29,225.69
Total	\$140,509.11

[Compensation Schedule on Following Page]



**Proposed Compensation
For Proposed Program A**

The following pricing applies to our attached proposal for RFP-23-019.

For Calendar Year 2023

Event	Cost
Milpitas 4 th of July Celebration	\$23,000 ⁽¹⁾ (2) (Twenty Three Thousand dollars)
Milpitas Lunar New Year Celebration	\$4,000 ⁽¹⁾ (2) (Four Thousand Dollars)

- (1) For calendar years 2024 through 2027, a 2% price increase per year will apply if the City of Milpitas wishes to extend the contract to those years.
- (2) Above prices include all insurance, products, equipment, delivery, set-up, firing, and removal from site. This is a turn-key price. The only expense NOT covered in this price is the cost of any fire permit fees charged by the City of Milpitas for these events. That cost, if any, will be paid by Fireworks America at the time of permit application and will be invoiced back to the City of Milpitas separately.


 Jim Acker, Regional Manager
 Fireworks & Stage FX America
 September 20, 2022

Activity Schedule

**Section 4****July 4th - Event Itinerary**

A show this size can be set-up and removed in one day if it is designed and produced as a standard simple show. However, in order to provide the City of Milpitas with a world-class fireworks display with multiple launch positions we request the ability to begin the set-up on the afternoon of July 3rd. This will allow us to properly lay out and set-up everything required to provide the best display possible. Assuming that this meets with your approval, our schedule would follow these approximate timelines:

July 3:

1:00 PM – 2:00 PM:

- Arrive firing location,
- Measure firing area, establish safety zone lines and determine exact locations for firing equipment
- Unload and assemble all launch equipment. Note: No fireworks will be unloaded or stored on site

6:00 PM: Depart firing location.

July 4:

9:00AM

- Arrive firing location
- Safety meeting with crew
- Double check firing equipment locations and aiming
- Establish and mark security and “keep out” areas
- Unload fireworks product
- Begin loading fireworks into launch mortars

12:00 noon

- Lunch break

1:00 PM

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- Continue loading fireworks products

3:00 PM

- Fireworks loading complete
- Firing System circuit (continuity) safety checks performed

4:00 PM

- Ready to shoot

Section 4 (continued)**Lunar New Year - Event Itinerary**

A show this size can be set-up and removed in one day. Fireworks America has pre-fabricated equipment for the safe discharge of firecrackers, and they are easily transported and set- up/removed in one day.

The following is our proposed set-up timeline for the date of event:

Note: times are approximate based on actual event time to be determined.

Date of Event:

10:00 AM

- Arrive firing location, meet with client, safety briefing, unload equipment.
- Establish safety zone lines and determine exact locations for firing equipment
- Load firecrackers onto firecracker display racks.

12:00 noon

- Lunch break

2:00 PM

- Firecracker loading completed. Safety checks accomplished.
- Ready to fire at client's requested time.

1 Hour after event:

- Clean up firecracker debris
- Remove firecracker racks
- Safety check area
- Depart area.

EXHIBIT D

INSURANCE REQUIREMENTS

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

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

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

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

Commercial General Liability (CGL):

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

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

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 \$5,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability:

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

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

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

Professional Liability (Errors and Omissions):

☐ Insurance appropriate to the Contractor or Consultant's profession, with limit no less than \$1,000,000.00 per occurrence or claim, \$2,000,000.00 aggregate.

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

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

Workers' Compensation Insurance:

☒ 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.

X Notice of Cancellation, Suspension or Otherwise Voiding Policies:

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

X Waiver of Subrogation:

Contractor or Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor or Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Contractor or Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Contractor or Consultant, its employees, agents and subcontractors.

___ Completed Operations

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

THE FOLLOWING PROVISIONS APPLY TO ALL AGREEMENTS

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

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

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

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

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

Acceptability of Insurers:

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

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

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor or Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.
4. A copy of the claims reporting requirements must be submitted to the City for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractor's Pollution Liability Policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the 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:	Review and Accept the 2022 Legislative Season Outcome Report (Staff Contact: Walter C. Rossmann, Deputy City Manager, 408-586-3012)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	11/15/2022
	<u>Recommendation:</u> Review and Accept the 2022 Legislative Season Outcome Report

BACKGROUND:

On May 18, 2021, the City Council approved the Legislative Advocacy Policy (Policy) and Legislative Guiding Principles (Attachment 1). The Policy establishes clear guidelines for advancing City goals and positions through legislative review and advocacy at the regional, state, and federal levels of government and to provide guidance for City officials who serve on regional, state, and national boards, committees, and commissions when they are asked to review public policy matters and issues.

Legislation and issues of interest are brought to the City's attention through several means: League of California Cities, National League of Cities, Cities Association of Santa Clara County, Councilmembers, legislators, City staff, community members, and professional or governmental organizations. Per the Council Policy, all legislation or issues of interest shall be referred to the City Manager's Office.

ANALYSIS:

As reported on the Consent Agenda for the September 6, 2022 City Council meeting, the City issued 18 letters, of which ten letters supporting and eight letters opposing individual bills based on the approved legislative guiding principles (see attached). This report provides an update on the legislative advocacy success for 2022.

The table below summarizes the City's position and outcome of the 18 bills the City opposed or supported. Of the ten bills which the City supported, the Governor approved seven and vetoed two bills, and one bill was not approved by the Legislature on time. Both bills the City supported and the Governor vetoed were related to solid waste management. Of the eight bills which the City opposed, the Governor approved six bills and two bills were not approved by the Legislature on time. Five of the six bills the City opposed and the Governor approved were related to land use and zoning regulations and approvals, such as the maximum height of ADUs, parking requirements for new developments, or approval process for affordable and mixed-use housing development projects.

Item No.	Measure No. & Author	Measure Title	Measure Description	City Position	Legislation Outcome
1	AB 916 (Salas)	Accessory Dwelling Units.	• Would require cities to increase the height maximum of ADUs from 16 to 18 feet on all parcels and to 25 feet for multifamily or single-family parcel located within a half mile of transit. • Would add a provision which sets a minimum height requirement of 25 feet for ADUs that are attached to a primary single-family residence.	Oppose	9/28/2022: Approved by the Governor. Chaptered by Secretary of State – Chapter 635, Statutes of 2022

Item No.	Measure No. & Author	Measure Title	Measure Description	City Position	Legislation Outcome
2	AB 1985 (Robert Rivas)	Organic Waste: Recovered Organic Waste Product Procurement Targets: List of Available Products.	Would assist local governments implementing the state's organic waste diversion targets by: 1) phasing in over two years the SB 1383 procurement requirements, 2) adding clarity to what projects and products count towards the procurement requirements, and 3) allow local jurisdictions to use organic waste processed out of state for the purposes of meeting procurement targets.	Support	9/16/2022: Approved by the Governor. Chaptered by Secretary of State – Chapter 344, Statutes of 2022
3	AB 2011 (Wicks)	Affordable Housing and High Road Jobs Act of 2022.	Would require nearly all cities to ministerially approve, without condition or discretion, certain affordable and mixed-use housing developments in areas of a city where office, retail, or parking are principally allowed regardless of any inconsistency with a local government's general plan, specific plan, zoning ordinance, or regulation.	Oppose	9/28/2022: Approved by the Governor. Chaptered by Secretary of State – Chapter 647, Statutes of 2022
4	AB 2097 (Friedman)	Residential and Commercial Development: Parking Requirements.	Would prohibit a local government from imposing or enforcing a minimum automobile parking requirement on specified residential, commercial, or other developments, if the development is located on a parcel within one-half mile of public transit.	Oppose	9/22/2022: Approved by the Governor. Chaptered by Secretary of State – Chapter 459, Statutes of 2022
5	AB 2440 (Irwin)	Responsible Battery Recycling Act of 2022.	Would require producers of batteries and battery-embedded products to establish a stewardship program for the collection, transportation, recycling, and the safe and proper management of batteries or battery-embedded products in California.	Support	9/16/2022: Approved by the Governor. Chaptered by Secretary of State – Chapter 351, Statutes of 2022
6	SB 6 (Caballero)	Local Planning: Housing Commercial Zones.	Would create a new process allowing residential development on certain commercial and industrial sites, including allowing qualifying projects to use the streamlined application procedures of Senate Bill 35 (Wiener, 2017).	Oppose	9/28/2022: Approved by the Governor. Chaptered by Secretary of State – Chapter 659, Statutes of 2022
7	SB 897 (Wieckowski)	Accessory Dwelling Units.	Would require cities to allow ADUs to be constructed with a height of up to 25 feet, within one half mile of a major transit stop or high-quality bus corridor and permit constructed ADUs that are in violation of state building standards and in violation of local zoning requirements.	Oppose	9/28/2022: Approved by the Governor. Chaptered by Secretary of State – Chapter 664, Statutes of 2022
8	SB 1000 (Becker)	Law Enforcement Agencies: Radio Communications.	Would require law enforcement agencies to, by no later than January 1, 2024, ensure public access to the radio communications of that agency.	Oppose	Not approved on time for Governor's consideration
9	SB 1087	Vehicles:	Would limit who can legally sell and	Support	9/25/2022:

Item No.	Measure No. & Author	Measure Title	Measure Description	City Position	Legislation Outcome
	(Gonzalez)	Catalytic Converters.	purchase a detached catalytic converter and would make a violation of this law an infraction punishable with a fine between \$1,000 to \$5,000.		Approved by the Governor. Chaptered by Secretary of State – Chapter 514, Statutes of 2022
10	SB 1127 (Atkins)	Workers' Compensation: Liability Presumptions.	Would fundamentally alter longstanding rules and timeframes for determining eligibility for workers' compensation claims and would increase systemic friction and litigation. This measure would also impose massive new penalties on employers.	Oppose	9/29/2022: Approved by the Governor. Chaptered by Secretary of State – Chapter 835, Statutes of 2022
11	AB 2208 (Kalra)	Fluorescent Lamps: Sale and Distribution: Prohibition.	Would prohibit, on or after January 1, 2024, ascrew or bayonet base type compact fluorescent lamp, as defined, and, on and after January 1, 2025, a pin-base type compact fluorescent lamp or a linear fluorescent lamp, as defined, from being offered for final sale, sold at final sale, or distributed in this state as a new manufactured product with certain medically necessary lamps exempted.	Support	9/18/2022: Approved by the Governor. Chaptered by Secretary of State – Chapter 409, Statutes of 2022
12	AB 2784 (Ting)	Solid Waste: Thermoform Plastic Containers: Postconsumer Thermoform Recycled Plastic.	- Would require, effective January 1, 2025, that the total thermoform plastic containers sold or imported by a producer on average, contain specified amounts of postconsumer thermoform recycled plastic per year and no less than 20% to 30% postconsumer recycled plastic per year on and after July 1, 2030, based on certain conditions. - Would also exempt from these requirements, as specified, thermoform plastic containers used to package dairy products under certain conditions.	Support	9/19/2022: Vetoed by Governor.
13	SB 1046 (Eggman)	Solid Waste: Pre-Checkout Bags.	Would prohibit, on or after January 1, 2025, a store, as defined, by providing a precheckout bag to a customer if the bag is not either a compostable bag or a recycled paper bag.	Support	9/30/2022: Approved by the Governor. Chaptered by Secretary of State – Chapter 991, Statutes of 2022
14	SB 1215 (Newman)	Electronic Waste Recycling Act of 2003: Covered Battery-Embedded Products.	- Would expand the definition of "covered electronic device" to include a "covered battery-embedded product," as defined, thereby expanding the scope of the act to include all covered battery-embedded products, as provided. - Would require a consumer, on or after January 1, 2026, to pay a covered battery-embedded waste recycling fee.	Support	9/16/2022: Approved by the Governor. Chaptered by Secretary of State – Chapter 370, Statutes of 2022

Item No.	Measure No. & Author	Measure Title	Measure Description	City Position	Legislation Outcome
15	SB 1256 (Wieckowski)	Waste Management: Disposable Propane Cylinders.	Would, on or after January 1, 2028, prohibit the sale or offer of disposable propane cylinders.	Support	9/29/2022: Vetoed by the Governor.
16	AB 1740 (Muratsuchi)	Catalytic Converters	Would require a core recycler to include additional information in the written record, including the year, make, and model of the vehicle from which the catalytic converter was removed and a copy of the title of the vehicle from which the catalytic converter was removed.	Support	9/25/2022: Approved by the Governor. Chaptered by Secretary of State – Chapter 513, Statutes of 2022
17	AB 2181 (Berman)	Santa Clara Valley Transportation Authority	Would, on or after July 1, 2023, revise the membership of the board of directors to instead consist of two representatives of the county who are community members and appointed by the president of the board of supervisors with board of supervisors approval, five representatives of the other cities in the county, including at least two community members and two council members or mayors of those cities, elected through a ranked choice voting process by the city council of those cities, as specified	Oppose	Not approved on time for Governor's consideration
18	AB 2407 (O'Donnell)	Vehicle Tampering: Theft of Catalytic Converters	- Would require a core recycler to report the information collected to the chief of police or the sheriff, as prescribed, and to request to receive theft alert notifications regarding the theft of catalytic converters from a specified theft alert system. - Would require a core recycler to obtain the thumbprint of a seller of a catalytic converter and to preserve the thumbprint for a period of two years, except as specified.	Support	Not approved on time for Governor's consideration

FISCAL IMPACT:

Any fiscal impact will be identified when the implementation of a particular legislation requires Council approval or funding.

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:

Review and Accept the 2022 Legislative Season Outcome Report.

Attachment(s):

[Legislative Advocacy Policy and Legislative Guiding Principles](#)



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution Appointing Roger Lee as Interim Public Works Director (Jeannine Seher, Human Resources Director, 408-586-3086)
Category:	Leadership and Support Services
Meeting Date:	11/15/2022
	<u>Recommendation:</u> Adopt a resolution appointing Roger Lee as Interim Public Works Director in accordance with California Government Code Sections 7522.56 and 21221(h) and approve, and authorize the City Manager to execute, an employment agreement with Roger Lee.

BACKGROUND:

The California Public Employees Reform Act of 2013 requires a 180-day “wait” period before a retiree can return to work for a public agency, subject to exceptions that do not apply in this instance. In addition to the requirements of PEPR, the appointment of a retiree to a vacant position must comply with Section 21221(h) of the Public Employees’ Retirement Law (“PERL”). In accordance with PERL, the appointment is permissible if it is made during the recruitment for a permanent appointment to the position and it is approved by the governing body of the employer in a public meeting. Staff has worked with the City Attorney to ensure that additional requirements, such as ones that relate to compensation and hours worked, will be met.

ANALYSIS:

Roger Lee retired from the City of Cupertino and served as Public Works Director position with more than 13 years of Public Works leadership experience in the public sector. His last day of work was December 30, 2021, thereby satisfying the statutory 180-day “wait” period. Given his Public Works background, Mr. Lee has significant experience and knowledge related to the management and operation of the Public Works Department. Consistent with the requirements of Government Code Section 21221(h), the City has initiated a recruitment for a regular appointment to the Public Works Director vacancy. Staff recommends Mr. Lee be appointed to serve as the Interim Public Works Director pending the conclusion of the recruitment process for a regular appointment to assist in the transition of leadership in the Public Works Department. Included in the Council’s agenda packet is the required resolution to appoint a retiree pursuant to Government Code Sections 7522.56 and 21221(h) and the employment agreement.

POLICY ALTERNATIVE(S):

Alternative 1: Do not adopt the resolution appointing Roger Lee as Interim Public Works Director and do not approve and authorize the City Manager to execute, a retroactive employment agreement with Mr. Lee.

Pros: None

Cons: This will create difficulty in the smooth transition of leadership in the Public Works Department.

Reason for Not Recommending: This will create difficulty in the smooth transition of leadership in the Public Works Department.

FISCAL IMPACT:

The compensation paid to retirees cannot be less than the minimum nor exceed the maximum hourly rate paid to other employees performing comparable duties and is limited to 960 hours per fiscal year. Accordingly, the hourly rate to be paid is \$86.32 or up to \$120.85 per fiscal year. Funding is available from staff vacancies within the FY2022-23 adopted budget.

California Environmental Quality Act (CEQA):

Approval of the recommendation is not an activity defined as a “project” under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines 15061(b)(3) and 15378(b)(4) either because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment and/or because the action is financial and/or administrative and does not directly impact the environment.

RECOMMENDATION:

Adopt a resolution appointing Roger Lee as Interim Public Works Director in accordance with California Government Code Sections 7522.56 and 21221(h) and approve, and authorize the City Manager to execute, an employment agreement with Roger Lee.

Attachment(s):

1. Resolution appointing Roger Lee as Interim Public Works Director in accordance with California Government Code Section 7522.56 and 21221(h).
2. Employment Agreement

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MILPITAS APPOINTING ROGER LEE AS INTERIM
PUBLIC WORKS DIRECTOR AND APPROVING
EMPLOYMENT AGREEMENT**

WHEREAS, Government Code Section 21221(h) permits the City Council to appoint a retired annuitant to a vacant position requiring specialized skills during recruitment for a permanent appointment, and provides that such appointment will not subject the retired person to reinstatement from retirement or loss of benefits so long as it is a single appointment that does not exceed 960 hours in a fiscal year; and

WHEREAS, the position of Public Works Director become vacant at close of business on September 2, 2022; and

WHEREAS, Government Code Section 7522.56(f) requires that post-retirement employment commence no earlier than 180 days after the retirement date; and

WHEREAS, Section 7522.56 provides that this exception to the 180-day wait period shall not apply if the retiree accepts any retirement-related incentive; and

WHEREAS, the Milpitas City Council, the City of Milpitas, and Roger Lee certify that Roger Lee has not and will not receive a Golden Handshake or any other retirement-related incentive; and

WHEREAS, the Milpitas City Council desires to appoint Roger Lee, who retired from the City of Cupertino in the position of Public Works Director, effective December 31, 2021, as an interim appointment retired annuitant to the vacant position of Public Works Director for the City of Milpitas under Government Code Section 21221(h), effective August 29, 2022; and

WHEREAS, Roger Lee has over 13 years of experience in leadership as Public Works Director and Assistant Director with an extensive history in public sector; and

WHEREAS, an appointment under Government Code Section 21221(h) requires an active, publicly posted recruitment for a permanent replacement; and

WHEREAS, information regarding the recruitment for the Public Works Director has been posted and is on the City's webpage for job opportunities available at <https://www.ci.milpitas.ca.gov/milpitas/departments/about-human-resources-2/38914-2/>; and

WHEREAS, this Section 21221(h) appointment shall only be made once and therefore will end on the date immediately preceding the date on which the permanent replacement for the vacant position of Public Works Director for the City of Milpitas commences his or her

employment or, if earlier, the date that this appointment is terminated by the City or Roger Lee; and

WHEREAS, the entire employment agreement between Roger Lee and the City of Milpitas has been reviewed by this body and is attached hereto as **Exhibit A**; and

WHEREAS, the employment shall be limited to 960 hours per fiscal year; and

WHEREAS, the compensation paid to retirees cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties, divided by 173.333 to equal the hourly rate; and

WHEREAS, the minimum hourly rate for this position is \$83.84, and the maximum hourly rate for this position is \$117.37, and

WHEREAS, the hourly rate to be paid to Roger Lee is \$115.07; and

WHEREAS, Roger Lee has not and will not receive any other benefit, incentive compensation in lieu of benefits or any other form of compensation in addition to this hourly pay rate.

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 appoints Roger Lee as interim Public Works Director effective August 29, 2022, pursuant to the authority provided under Government Code Section 21221(h) and 7522.56, during the recruitment, selection and employment of a permanent Public Works Director, to provide the critically-needed, specialized skills necessary to assist the City Manager with the management of the Public Works Department.
3. The employment agreement with Roger Lee, a copy of which is incorporated herein as Exhibit A, is approved by the City Council, effective August 29, 2022.
4. The City Manager is authorized to execute said agreement on behalf of the City, with such technical amendments as may be deemed appropriate by the City Manager and City Attorney.

PASSED AND ADOPTED this _____, day of _____, 2022, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi, City Attorney

EXHIBIT A

EMPLOYMENT AGREEMENT FOR INTERIM PUBLIC WORKS DIRECTOR

This Employment Agreement (“Agreement”) is made by and between the City of Milpitas, a municipal corporation of the State of California (“City”) and Roger Lee, an individual (“Retiree”) as of August 29, 2022 (“Effective Date”).

RECITALS

- A. Retiree was previously employed by the City of Cupertino as Public Works Director and Assistant Director, serving the City of Cupertino for approximately 13 years; and
- B. Retiree retired from the City of Cupertino effective December 30, 2021, and is collecting a retirement pension from the California Public Employees’ Retirement System (CalPERS); and
- C. The City has a vacancy in the position of Public Works Director, a regular position for which the City is conducting a recruitment for a permanent appointment; and
- D. The City has an immediate need for an employee to temporarily perform the duties of Public Works Director, a position involving specialized skills and training, and which is critically necessary to the on-going duties and functions of the City’s Public Works Department; and
- E. Retiree has the necessary qualifications, experience and abilities to fulfill the duties of the Public Works Director position on an interim basis; and
- F. Retired Annuitant’s employment is authorized by Government Code section 21221(h), which permits the City to appoint a CalPERS retired annuitant to a vacant position requiring specialized skills during recruitment for a permanent replacement; and
- G. City desires to retain the services of Retiree in accordance with California Government Code Section 21221(h) and Retiree agrees to provide certain services to City under the strict terms and conditions set out in this Agreement.

In consideration of this matter described above and of the mutual benefits and obligations set forth in this Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, the parties of this Agreement agree as follows:

AGREEMENT

Section 1. Term of Services

The term of this Agreement is from August 29, 2022, until such time as a permanent replacement for the position of Public Works Director has been selected and has commenced employment, unless terminated sooner as provided below.

Section 2. Scope of Services

Retiree agrees to perform the duties of the Public Works Director position on an interim basis as set forth in the job description for the position. Retiree will report directly to the Deputy City Manager. Retiree shall comply with all City rules, policies, guidelines, regulations, and laws.

Section 3. Compensation; Hours

City agrees to compensate Retiree at \$120.65 per hour for all services provided under this Agreement. Payments from City to Retiree shall be made during the normal payroll cycles of other City employees.

City has reviewed and compared the hourly rate set forth in this Section with other employees performing comparable duties and the hourly rate set forth in this Section does not exceed such other employee's compensation.

Retiree agrees and acknowledges that he shall not perform any services under this Agreement exceeding a total of nine hundred sixty (960) hours during any fiscal year (July 1 to June 30). Retiree shall record his hours on a pre-approved timesheet that shall be submitted to the City every week.

The position is a temporary, hourly assignment which is generally not expected to exceed 40 hours per week. The City, through the Assistant City Manager, will assign Retiree hours to work. Due to the nature of the position, it is understood that the work day and work week hours may vary.

There are no other benefits, incentives, compensation in lieu of benefits or other forms of compensation in addition to the hourly pay rate set forth in this Section.

Section 4. Location

The primary location for services will be at the following address:

Milpitas Public Works, 1265 N. Milpitas Blvd., Milpitas, California 95035

Section 5. Compliance with Laws

This Agreement will be construed in accordance with and governed by the laws in the State of California. In the event that suit shall be brought by any of the parties, the parties agree that venue

shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California. Retiree shall comply with all applicable laws, rules, policies, and guidelines. Retiree agrees and acknowledges that the State of California and the governing body of the California Public Employees' Retirement System enact strict laws, regulations and guidelines relating to services provided by "retired annuitants" to public agencies contracting with the California Public Employees' Retirement System. Retiree agrees to comply with all applicable laws, regulations and guidelines relating to the services provided under this Agreement.

Section 6. Termination

This Agreement may be terminated by either party for convenience by providing written notice to the other party.

Section 7. Miscellaneous

- a. Retiree has read each and every part of this Agreement and Retiree freely and voluntarily has entered into this Agreement. This Agreement is a negotiated document and shall not be interpreted for or against any party by reason of the fact that such party may have drafted this Agreement or any of its provisions.
- b. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjusted shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- c. This Agreement, including the exhibits, represents the entire and integrated agreement between City and Retiree and supersedes all prior negotiations, representations, or agreements, either written or oral.

In witness where of the parties have duly affixed their signatures on this XX day of December, 2022.

CITY:

RETIREE:

Steve McHarris, City Manager

Roger Lee



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution Appointing Liz Brown as Interim Human Resources Director (Jeannine Seher, Human Resources Director, 408-586-3086)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	11/15/2022
	<u>Recommendation:</u> Adopt a resolution appointing Liz Brown as Interim Human Resources Director in accordance with California Government Code Sections 7522.56 and 21221(h) and approve, and authorize the City Manager to execute, an employment agreement with Liz Brown.

BACKGROUND:

The California Public Employees Reform Act of 2013 requires a 180-day “wait” period before a retiree can return to work for a public agency; subject to exceptions that do not apply in this instance. In addition to the requirements of PEPR, the appointment of a retiree to a vacant position must comply with Section 21221(h) of the Public Employees’ Retirement Law (“PERL”). In accordance with PERL, the appointment is permissible if it is made during the recruitment for a permanent appointment to the position and it is approved by the governing body of the employer in a public meeting. Staff has worked with the City Attorney to ensure that additional requirements, such as ones that relate to compensation and hours worked, will be met.

ANALYSIS:

The City’s current Human Resources Director will be retiring at the end of calendar year 2022. The City is recruiting for the Human Resources Director position but would like to hire an Interim Human Resources Director to ensure a smooth transition. Elizabeth (Liz) Brown retired from the Human Resources (HR) Director position with more than 29 years of Human Resources (HR) experience in the public sector. Ms. Brown initially retired from the City of Santa Clara in the position of Director of Human Resources, effective March 23, 2018. Subsequent to that, Ms. Brown unretired and worked as HR Director for the City of Milpitas from 2018, retiring on July 6, 2020. Given her human resources background and familiarity with the City of Milpitas, Ms. Brown has significant experience and knowledge related to the management and operation of the Human Resources Department. Consistent with the requirements of Government Code Section 21221(h), the City has initiated a recruitment for a regular appointment to the Human Resources Director vacancy. Staff is recommending that the City bring Ms. Brown back to serve as the Interim HR Director pending the conclusion of the recruitment process for a regular appointment to assist in the transition of leadership in the HR Department. Included in the Council’s agenda packet is the required resolution to appoint a retiree pursuant to Government Code Sections 7522.56 and 21221(h) and the employment agreement.

POLICY ALTERNATIVE(S):

Alternative 1: Do not adopt the resolution appointing Liz Brown as Interim Human Resources Director and do not approve and authorize the City Manager to execute, an employment agreement with Liz Brown.

Pros: None

Cons: This will create difficulty in the smooth transition of leadership in the Human Resources Department.

Reason for Not Recommending: Not adopting the resolution will leave the City without a Director in a key City department and will not enable a smooth transition of leadership in the Human Resources Department.

FISCAL IMPACT:

The compensation paid to retirees cannot be less than the minimum nor exceed the maximum hourly rate paid to other employees performing comparable duties and is limited to 960 hours per fiscal year. Accordingly, the

hourly rate to be paid is \$83.84 or up to \$117.37 per hour. Funding is available from staff vacancies within the FY2022-23 adopted budget.

California Environmental Quality Act (CEQA):

Approval of the recommendation is not an activity defined as a “project” under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines 15061(b)(3) and 15378(b)(4) either because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment and/or because the action is financial and/or administrative and does not directly impact the environment.

RECOMMENDATION:

Adopt a resolution appointing Liz Brown as Interim Human Resources Director in accordance with California Government Code Sections 7522.56 and 21221(h) and approve, and authorize the City Manager to execute, an employment agreement with Liz Brown.

Attachment(s):

1. Resolution appointing Liz Brown as Interim Human Resources Director in accordance with California Government Code Section 7522.56 and 21221(h) and Employment Agreement

RESOLUTION NO. _____**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MILPITAS APPOINTING ELIZABETH (LIZ) BROWN
AS INTERIM HUMAN RESOURCES DIRECTOR AND
APPROVING EMPLOYMENT AGREEMENT**

WHEREAS, Government Code Section 21221(h) permits the City Council to appoint a retired annuitant to a vacant position requiring specialized skills during recruitment for a permanent appointment, and provides that such appointment will not subject the retired person to reinstatement from retirement or loss of benefits so long as it is a single appointment that does not exceed 960 hours in a fiscal year; and

WHEREAS, the position of Human Resources Director will become vacant at close of business on November 30, 2022; and

WHEREAS, Government Code Section 7522.56(f) requires that post-retirement employment commence no earlier than 180 days after the retirement date; and

WHEREAS, Section 7522.56 provides that this exception to the 180-day wait period shall not apply if the retiree accepts any retirement-related incentive; and

WHEREAS, the Milpitas City Council, the City of Milpitas, and Elizabeth (Liz) Brown certify that Liz Brown has not and will not receive a Golden Handshake or any other retirement-related incentive; and

WHEREAS, the Milpitas City Council desires to appoint Liz Brown, who retired from the City of Milpitas in the position of Human Resources Director, effective July 6, 2020, as an interim appointment retired annuitant to the vacant position of Human Resources Director for the City of Milpitas under Government Code Section 21221(h), effective December 1, 2022; and

WHEREAS, Liz Brown has over 15 years of experience in Human Resources with an extensive history in human resources department management, including her time serving as the HR Director for the City of Milpitas; and

WHEREAS, an appointment under Government Code Section 21221(h) requires an active, publicly posted recruitment for a permanent replacement; and

WHEREAS, information regarding the recruitment for the Human Resources Director has been posted and is on the City's webpage for job opportunities available at <https://www.ci.milpitas.ca.gov/milpitas/departments/about-human-resources-2/38914-2/>; and

WHEREAS, this Section 21221(h) appointment shall only be made once and therefore will end on the date immediately preceding the date on which the permanent replacement for the vacant position of Human Resources Director for the City of Milpitas commences his or her

employment or, if earlier, the date that this appointment is terminated by the City or Elizabeth (Liz) Brown; and

WHEREAS, the entire employment agreement between Liz Brown and the City of Milpitas has been reviewed by this body and is attached hereto as **Exhibit A**; and

WHEREAS, the employment shall be limited to 960 hours per fiscal year; and

WHEREAS, the compensation paid to retirees cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties, divided by 173.333 to equal the hourly rate; and

WHEREAS, the minimum hourly rate for this position is \$83.84, and the maximum hourly rate for this position is \$117.37, and

WHEREAS, the hourly rate to be paid to Liz Brown is \$115.07; and

WHEREAS, Liz Brown has not and will not receive any other benefit, incentive compensation in lieu of benefits or any other form of compensation in addition to this hourly pay rate.

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 appoints Liz Brown as interim Human Resources Director effective December 1, 2022, pursuant to the authority provided under Government Code Section 21221(h) and 7522.56, during the recruitment, selection and employment of a permanent HR Director, to provide the critically-needed, specialized skills necessary to assist the City Manager with the management of the HR Department.
3. The employment agreement with Liz Brown, a copy of which is incorporated herein as Exhibit A, is approved by the City Council, effective December 1, 2022.
4. The City Manager is authorized to execute said agreement on behalf of the City, with such technical amendments as may be deemed appropriate by the City Manager and City Attorney.

PASSED AND ADOPTED this _____, day of _____, 2022, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi, City Attorney

EXHIBIT A

EMPLOYMENT AGREEMENT FOR INTERIM HUMAN RESOURCES DIRECTOR SERVICES

This Employment Agreement (“Agreement”) is made by and between the City of Milpitas, a municipal corporation of the State of California (“City”) and Elizabeth (Liz) Brown, an individual (“Retiree”) as of January 3, 2022 (“Effective Date”).

RECITALS

- A. Retiree was previously employed by the City for two years, serving most recently as Human Resources Director until July 6, 2020; and
- B. Retiree retired from the City effective July 7, 2020 and is collecting a retirement pension from the California Public Employees’ Retirement System (CalPERS); and
- C. The City has a vacancy in the position of Human Resources Director, a regular position for which the City is conducting a recruitment for a permanent appointment; and
- D. The City has an immediate need for an employee to temporarily perform the duties of Human Resources Director, a position involving specialized skills and training, and which is critically necessary to the on-going duties and functions of the City’s Human Resources Department;
- E. Retiree has the necessary qualifications, experience and abilities to fulfill the duties of the Human Resources Director position on an interim basis; and
- F. Retired Annuitant’s employment is authorized by Government Code section 21221(h), which permits the City to appoint a CalPERS retired annuitant to a vacant position requiring specialized skills during recruitment for a permanent replacement.
- G. City desires to retain the services of Retiree in accordance with California Government Code Section 21221(h) and Retiree agrees to provide certain services to City under the strict terms and conditions set out in this Agreement.

In consideration of this matter described above and of the mutual benefits and obligations set forth in this Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, the parties of this Agreement agree as follows:

AGREEMENT

Section 1. Term of Services

The term of this Agreement is from December 1, 2022 until such time as a permanent replacement for the position of Human Resources Director has been selected and has commenced employment, unless terminated sooner as provided below.

Section 2. Scope of Services

Retiree agrees to perform the duties of the Human Resources Director position on an interim basis as set forth in the job description for the position. Retiree will report directly to the Assistant City Manager. Retiree shall comply with all City rules, policies, guidelines, regulations, and laws.

Section 3. Compensation; Hours

City agrees to compensate Retiree at \$115.07 per hour for all services provided under this Agreement. Payments from City to Retiree shall be made during the normal payroll cycles of other City employees.

City has reviewed and compared the hourly rate set forth in this Section with other employees performing comparable duties and the hourly rate set forth in this Section does not exceed such other employee's compensation.

Retiree agrees and acknowledges that he shall not perform any services under this Agreement exceeding a total of nine hundred sixty (960) hours during any fiscal year (July 1 to June 30). Retiree shall record his hours on a pre-approved timesheet that shall be submitted to the City every week.

The position is a temporary, hourly assignment which is generally not expected to exceed 40 hours per week. The City, through the Assistant City Manager, will assign Retiree hours to work. Due to the nature of the position, it is understood that the work day and work week hours may vary.

There are no other benefits, incentives, compensation in lieu of benefits or other forms of compensation in addition to the hourly pay rate set forth in this Section.

Section 4. Location

The primary location for services will be at the following address:

Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, California 95035

Section 5. Compliance with Laws

This Agreement will be construed in accordance with and governed by the laws in the State of California. In the event that suit shall be brought by any of the parties, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction

is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California. Retiree shall comply with all applicable laws, rules, policies, and guidelines. Retiree agrees and acknowledges that the State of California and the governing body of the California Public Employees' Retirement System enact strict laws, regulations and guidelines relating to services provided by "retired annuitants" to public agencies contracting with the California Public Employees' Retirement System. Retiree agrees to comply with all applicable laws, regulations and guidelines relating to the services provided under this Agreement.

Section 6. Termination

This Agreement may be terminated by either party for convenience by providing written notice to the other party.

Section 7. Miscellaneous

- a. Retiree has read each and every part of this Agreement and Retiree freely and voluntarily has entered into this Agreement. This Agreement is a negotiated document and shall not be interpreted for or against any party by reason of the fact that such party may have drafted this Agreement or any of its provisions.
- b. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjusted shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- c. This Agreement, including the exhibits, represents the entire and integrated agreement between City and Retiree and supersedes all prior negotiations, representations, or agreements, either written or oral.

In witness where of the parties have duty affixed their signatures on this XX day of December, 2022.

CITY:

RETIREE:

Steve McHarris, City Manager

Elizabeth Brown



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Appointment of City Council Ad Hoc Naming Subcommittee Members (Staff Contact: Renee Lorentzen, Director of Recreation and Community Services, 408-586-3409)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	11/15/2022
	<u>Recommendation:</u> Defer the appointment of two Members of the City Council to January 2023 to be heard with appointments of Members of the City Council to commissions, boards, and subcommittees for the next legislative period.

BACKGROUND:

On May 3, 2022 the City Council provided feedback to staff on the draft revision of the City Streets, Parks and Facilities Naming Policy (Policy) and on June 21, 2022, the City Council approved the Policy. Per the updated Policy, the City Council is to form an Ad Hoc City Council Naming Subcommittee to make recommendation to City Council on the naming of City streets, parks and facilities.

On August 6, 2022, City Council directed staff to return to the second meeting in November to discuss the formation of the Ad Hoc City Council Naming Subcommittee.

ANALYSIS:

On January 22, 2022, the City Council approved the City Council Policies and Procedures Handbook (Handbook). Chapter II, Section D.10 titled "City Council Subcommittees" states in part that "Subcommittees assist the Council by studying an issue and preparing policy alternatives and implications for Council deliberation." Further, "Council subcommittees may not speak or act for the Council, and the subcommittee members should be regularly reporting out their work to the City Council through a scheduled agenda item." Lastly, "Subcommittees shall obtain City Council concurrence before they proceed in any direction different from the original instructions of the City Council. In addition, Subcommittees should not implement policy, provide direction that would result in incurring additional expenses or provide direction to staff to take any actions that are not consistent with existing City Council direction without first obtaining City Council approval for such actions."

Historically, Councilmembers are appointed or re-appointed to serve as liaisons to City Commissions, Subcommittees, Task Forces, and outside agency boards and committees in January of each year. Traditionally, after a local election, the Mayor will reassign City Councilmembers to both the City and outside agency bodies, with input on the Councilmembers' interests and availability.

Milpitas' local election was on November 8 with new councilmembers and mayor to be sworn in on December 20. It is anticipated that new councilmember appointments by the Mayor would be agendized on January 10 or 17, 2023.

Fiscal Impact:

There is no fiscal impact with the formation of this Ad Hoc Subcommittee.

California Environmental Quality Act:

By the definition provided in the California Environmental Quality Act (CEQA) Guidelines Section 15378, this action does not qualify as a "project" for the purpose of CEQA.

Recommendation(s):

Defer the appointment of two Members of the City Council to January 2023 to be heard with appointments of Members of the City Council to commissions, boards, and subcommittees for the next legislative period.

Attachment:

None



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	FY 2022-23 1st Quarter Financial Status Report for the Quarter Ended September 30, 2022 (Staff Contact: Lauren Lai, Finance Director, 408-586-3111)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	11/15/2022
	<u>Recommendation:</u> Review the FY 2022-23 Quarterly Financial Status Report for the quarter ended September 30, 2022

BACKGROUND:

On June 7, 2022, the City Council approved the Fiscal Year (FY) 2022-23 Adopted Operating Budget in the amount of \$207.8 million and the General Fund Budget in the amount of \$117.6 million. After adoption of the budget, staff monitors revenues and expenditures for all funds with an emphasis on the General Fund and Enterprise Funds.

ANALYSIS:

This staff report provides a quarterly update on budget versus actual revenues and expenditures of the General, Water and Sewer Funds, the City's major operating funds. The summary information below as well as the attachments comprise the FY 2022-23 Quarterly Financial Status Report for the quarter ended September 30, 2022. Major revenue sources and expenditures for these funds are discussed below. The attachments provide a more detailed summary of budget versus actual revenues and expenditures for the first quarter of FY 2022-23 as well as prior year actual for comparison purposes.

General Fund

On June 7, 2022, the City Council approved the Fiscal Year (FY) 2022-23 Adopted Operating General Fund Budget in the amount of \$117.6 million. As of September 30, 2022, the City received \$10.8 million in revenues, or 9.2% of the FY22-23 amended revenue budget and incurred \$35.2 million in expenditures, or 29.4% of the FY22-23 amended operating budget. Revenues and expenditures are seasonal with cash flow fluctuations due to timing of revenue receipts and City services rendered. As such, actual percentage of revenues may not match the lapsed time period of the quarterly report (i.e. 9.2% of revenue versus 25% for 3-month time period).

Revenues

As mentioned above, the three months ending September 30, 2022, the General Fund has received \$10.8 million, or 9.2% of the FY 2022-23 amended revenue budget of \$117.6 million. Overall, General Fund revenues are 43.1% greater than last year at the same time, mainly due to sales taxes, hotel/motel taxes and the timing of internal booking of operating transfers-in. Adjusting for the operating transfer anomaly, General Fund revenues are trending 28.9% higher than last year as of September 30, 2022. The FY2022-23 Adopted Budget did assume a higher, recovering revenue, which is discussed further below by major categories. Thus, although Q1 revenues may be higher than prior year Q1 revenues, these increased levels of revenue are already included in the Adopted FY2022-23 Adopted Budget.

General Fund Revenues by Categories	Adopted Budget	Receipt 09/30/2022	Outstanding	% Receipt	FY21 Receipt 09/30/2021
Property Tax	\$42,636,192	152,697	\$42,483,495	0.4%	\$47,901
Sales and Use Tax	27,418,416	2,619,631	24,798,785	9.6%	2,099,011
Sales and Use Tax - Measure F	6,409,019	540,873	5,868,146	8.4%	369,041
Licenses, Permits & Fines	11,484,759	2,207,171	9,277,588	19.2%	1,825,553
Transient Occupancy Tax	8,329,238	2,149,488	6,179,750	25.8%	1,125,296
Operating Transfer In	7,168,627	1,072,397	6,096,231	15.0%	0
Franchise Fees	5,448,428	213,125	5,235,303	3.9%	515,528
Charges for Services	5,969,453	1,294,625	4,674,828	21.7%	913,631
Intergovernmental	1,081,728	35,585	1,046,143	3.3%	347,450
Other Taxes	1,067,452	216,793	850,659	20.3%	180,193
Use of Money and Property	264,000	59,339	204,661	22.5%	81,441
Other Revenues	349,657	235,960	113,697	67.5%	42,366
Grand Total	\$117,626,970	\$10,797,684	\$106,829,286	9.2%	\$7,547,410

- Property Taxes and Redevelopment Property Tax Trust Fund: Most property tax revenue is received in December and April, so it is normal for property tax revenue to be low in the first quarter. The revenue forecast estimates \$42.6 million in total property tax revenue for the City of Milpitas based on the County of Santa Clara (County) projections. Compared to the County's most recent update on November 04, 2022, the County's property tax projections are net \$3.1 million higher than the amended budget of \$42.6 million. However, such variance primarily relates to ERAF allocation that is involved in current litigation and accordingly, the County continues to advise 30% be excluded from the budget and appropriation.
- Sales & Use Tax: Sales tax is usually collected one quarter in arrears. As of September 30, 2022, the City has received one month of sales tax receipts. Revenues are 24.8% higher than last year at the same time primarily due to higher consumption and inflation. As more data becomes available from the sales tax expert consultant, sales tax revenue may need to be adjusted at mid-year to align with current trend. Staff will continue to monitor the slight upward trend.
- Sales & Use Tax – Measure F: The district tax became operative April 1, 2021 and sunsets in eight years. As of September 30, 2022, the City has received one month of sales tax receipt for Measure F. Revenues are 46.6% higher than last year at the same time, which was the go-live quarter. The budget currently aligns with the sales tax advisor's estimates.
- Franchise Fees: Franchise fees are typically received a month in arrears. Sanitation franchise fees attributed to August and September have not yet been received. Revenue is trending 58.7% lower compared to last year due to August sanitation fees received in October (2nd quarter) rather than September (1st quarter).
- Hotel/Motel (TOT) Tax: Revenues are 91% higher than last year at the same time primarily due to less COVID-19 restrictions and the end of mask mandates, which allowed for ease of travel. TOT taxes are typically received a month in arrears. While TOT revenues are improving, it may not recover to pre-pandemic revenue levels as personal and business travel and lodging may be altered. Staff will continue to monitor this revenue.

- **License and Permits:** Revenues are 20.9% greater than last year at the same time. This is largely due to the City processing higher volume of permits than prior year. Project timelines vary on a case-by-case basis and seldom within City control.
- **Charges for Services:** Revenues are 41.7% higher than last year at the same time. COVID-19 restrictions have eased and there is no longer a mask mandate, allowing more Recreation programs, events, and classes to be held compared to prior year which suffered shelter-in-place restrictions.
- **Use of Money and Property:** Revenues are 27.1% lower than last year at the same time due to sale of some investment holdings at a loss as part of the portfolio rebalancing in the first quarter.

Expenditures

For the three months ending September 30, 2022, the General Fund has utilized \$35.2 million, or 29.4%, of the FY 22-23 amended operating budget of \$119.5 million. The amended operating budget represents \$117.6 million of the adopted appropriation and \$1.9 million of carryover encumbrances. As of September 30, 2022, expenditures are trending 0.01% lower than last year. Staff will continue to monitor expenditures relative to Council authorized appropriations.

Staff would like to highlight the following items that are anomalies and/or current trends.

- Previously, City Attorney services were contracted with an outside vendor and the contract service costs were encumbered upfront in the first quarter. In FY 2022-23, the City has an in-house City Attorney, which drastically decreased the contractual service encumbrance, resulting in a significant decrease in first quarter expenditure.
- In Fire Department, there was a decrease in overtime partly due to less deployment in fire mutual aid.
- In Planning Department, higher than usual expenditure in first quarter was primarily due to a professional contract that was encumbered in the first quarter.
- Recreation Department restored more services and programs as the City emerged from the Pandemic, which required more temporary staffing, resulting in more temporary staffing costs.
- In Building Safety & Housing, higher than usual expenditure in first quarter was primarily due to contractual services encumbrance.
- Transfers Out represents operating transfers out to Information Technology Equipment Fund, and to Lightning and Maintenance District Fund.

General Fund Expenditures by Departments	Adopted Budget	Total YTD Expenditure Including Encumbrance	% of Amended Budget	FY22 YTD Expenditure Including Encumbrance
Building Safety & Housing	\$6,262,263	\$2,040,418	32.6%	\$ 1,630,706
City Attorney	1,231,924	121,143	9.8%	965,233
City Clerk	567,660	120,928	21.3%	143,737
City Council	608,662	114,049	18.7%	138,347
City Manager	2,299,197	641,296	27.9%	499,710
Economic Development	966,597	195,012	20.2%	278,935
Engineering	4,014,287	877,000	21.8%	884,561
Finance	4,456,189	1,185,163	26.6%	1,413,342
Fire	28,352,938	7,083,410	25.0%	7,612,114
Human Resources	1,999,281	585,207	29.3%	780,591
Information Technology	4,099,775	944,891	23.0%	1,220,685
Non-Departmental	7,956,407	4,767,921	59.9%	4,278,932
Planning	2,232,826	739,579	33.1%	548,072
Police	38,043,489	9,371,923	24.6%	8,833,106
Public Works	10,083,887	3,967,685	39.3%	4,434,917
Recreation & Community Services	6,017,007	2,056,643	34.2%	1,495,805

Transfers Out	341,866	341,866	100%	0
Grand Total	\$ 119,534,253	\$ 35,154,135	29.4%	\$ 35,158,791

Grants and Donations

In accordance with City Council approved Budget Guidelines, the City Manager has the authority to accept grants and donations up to \$100,000. Staff is reporting on acceptance of these grants and donations for this quarter.

1. 2023 CAL OES CA 9-1-1 Training - \$20,000
2. CA Commission on the Status of Women - \$25,000

Unanticipated Expenditure Reserve

In accordance with the City Council approved Budget Guidelines, as part of the quarterly financial status reports, Staff is reporting on the expenditures from the Unanticipated Expenditure Reserve for this quarter.

Unanticipated Expenditure Reserve Uses

Description	Amount
RJA Management Services	\$5,600
Sound Wall Repairs	18,500
Executive Recruitments	11,675
TOTAL for the Quarter Ending September 30, 2022	\$ 35,775

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

Revenues: For the three months ended September 30, 2022, \$8.4 million of charges for services, or 25.4%, of the \$33.1 million budgeted has been received. Total revenue received amounts to \$8.4 million, or 25.1%, of the \$33.5 million budgeted.

Expenditures: For the three months ended September 30, 2022, \$24.6 million, or 77.5%, of the \$31.8 million amended budget has been spent and/or encumbered. The Santa Clara Valley Water District and San Francisco Water Department wholesale water purchase contract encumbrance was posted for the full year in Q1 of FY23.

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

Revenues: For the three months ended September 30, 2022, \$6.1 million of charges for services, or 24.7%, of the \$24.5 million budgeted has been received. Total revenue received amounts to \$6.1 million, or 24.6%, of the \$24.7 million budgeted.

Expenditures: For the three months ended September 30, 2022, \$9.0 million, or 53.9%, of the \$16.7 million amended budget has been spent and/or encumbered. The City of San Jose wastewater treatment contract encumbrance was posted for the full year in Q1 of FY23.

POLICY ALTERNATIVE(S):

Alternative 1: Do not review the report.

Pros: There are no pros to not review the report.

Cons: Not reviewing the report may be interpreted that the data is incorrect.

Reason not recommended: Staff is reporting actual unaudited financial data to inform the Council and the public on the City's financial status.

FISCAL IMPACT:

This is an informational report intended to provide a financial update of the City's General, Water and Sewer funds for the quarter ended September 30, 2022. No budget amendment is recommended.

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 2022-23 Quarterly Financial Status Report for the Quarter Ended September 30, 2022

Attachment(s):

1. FY 2022-23 Revenue Report for Fiscal Year-To-Date September 30, 2022
2. FY 2022-23 General Fund Expenditures by Department September 30, 2022
3. FY 2022-23 Water and Sewer Funds Financial Status for Fiscal Year-To-Date September 30, 2022

CITY OF MILPITAS

General Fund Revenues

For Fiscal Year-To-Date September 30, 2022

	FY23	FY23	FY23	FY23	FY22	Percentage Increase (Decrease)
	Adopted	Revenue	Revenue Outstanding Favorable/ (Unfavorable)	Percentage of Adopted Budget	Revenue	
General Fund Revenues	Budget	As of 09/30/22		Budget	as of 09/30/21	FY23 / FY22
Property Tax	\$ 42,636,192	\$ 152,697	\$ (42,483,495)	0.4%	\$ 47,901	218.8%
Sales and Use Tax	27,418,416	2,619,631 (a)	\$ (24,798,785)	9.6%	2,099,011	24.8%
Sales and Use Tax - Measure F	6,409,019	540,873	\$ (5,868,146)	8.4%	369,041	46.6%
Licenses, Permits & Fines	11,484,759	2,207,171	\$ (9,277,588)	19.2%	1,825,553	20.9%
Hotel/Motel Tax	8,329,238	2,149,488 (b)	\$ (6,179,750)	25.8%	1,125,296	91.0%
Operating Transfer In	7,168,627	1,072,397	\$ (6,096,231)	15.0%	0	0.0%
Charges for Services	5,969,453	1,294,625	\$ (4,674,828)	21.7%	913,631	41.7%
Franchise Fees	5,448,428	213,125	\$ (5,235,303)	3.9%	515,528	-58.7%
Intergovernmental	1,081,728	35,585	\$ (1,046,143)	3.3%	347,450	-89.8%
Other Taxes	1,067,452	216,793	\$ (850,659)	20.3%	180,193	20.3%
Other Revenues	349,657	235,960	\$ (113,697)	67.5%	42,366	457.0%
Interest Income	264,000	59,339	\$ (204,661)	22.5%	81,441	-27.1%
Total General Fund Revenue	\$ 117,626,970	\$ 10,797,684	\$ (106,829,286)	9.2%	\$ 7,547,410	43.1%

(a) 1 of 3 quarterly payments have been received. Sales tax revenues are received two months in arrears.

(b) TOT is received one month in arrears.

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

Departments	Adopted Budget	Amendments	Grants C/O	Encumb. C/O	Amended Budget	Expenditure	Encumbrance	Total YTD Exp.	% of Amended Budget	FY22 Expenditure Including Encumbrance	% of Amended FY22 Budget
Building Safety & Housing	6,175,459	0	0	86,804	6,262,263	1,408,127	632,291	2,040,418	32.6%	1,630,706	27.6%
City Attorney	1,198,946	0	0	32,978	1,231,924	80,791	40,352	121,143	9.8%	965,233	93.8%
City Clerk	567,660	0	0	0	567,660	120,928	0	120,928	21.3%	143,737	25.2%
City Council	557,729	0	0	50,933	608,662	63,116	50,933	114,049	18.7%	138,347	22.6%
City Manager	2,149,366	0	0	149,830	2,299,197	493,391	147,905	641,296	27.9%	499,710	23.9%
Economic Development	965,847	0	0	750	966,597	194,262	750	195,012	20.2%	278,935	29.8%
Engineering	3,971,355	0	0	42,932	4,014,287	799,068	77,932	877,000	21.8%	884,561	23.6%
Finance	4,384,364	0	0	71,825	4,456,189	946,349	238,814	1,185,163	26.6%	1,413,342	33.1%
Fire	28,188,870	0	0	164,068	28,352,938	6,861,235	222,174	7,083,410	25.0%	7,612,114	28.6%
Human Resources	1,937,584	0	0	61,696	1,999,281	424,132	161,075	585,207	29.3%	780,591	39.9%
Information Technology	4,091,945	0	0	7,830	4,099,775	750,814	194,077	944,891	23.0%	1,220,685	32.9%
Non-Departmental	7,570,821	0	0	385,586	7,956,407	4,299,178	468,744	4,767,921	59.9%	4,278,932	50.0%
Planning	1,927,812	0	0	305,014	2,232,826	447,515	292,064	739,579	33.1%	548,072	24.9%
Police	37,935,204	0	0	108,284	38,043,489	9,110,124	261,798	9,371,923	24.6%	8,833,106	24.6%
Public Works	9,692,160	0	0	391,727	10,083,887	2,157,034	1,810,652	3,967,685	39.3%	4,434,917	47.4%
Recreation & Community Services	5,969,980	0	0	47,027	6,017,007	1,628,199	428,445	2,056,643	34.2%	1,495,805	27.8%
Transfers Out	341,866	0	0	0	341,866	341,866	0	341,866	100.0%	0	0.0%
Grand Total	117,626,969	0	0	1,907,284	119,534,253	30,126,130	5,028,005	35,154,135	29.4%	35,158,791	31.0%

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

Water Fund

Revenue Categories	Adopted Budget	Amendments	Grants C/O	Amended Budget	Receipt	Outstanding	% Receipt	Receipt 09/30/2021	% Receipt 09/30/2021
Charges for Services	33,144,215	0	0	33,144,215	8,427,005	24,717,210	25.4%	8,231,121	26.4%
Intergovernmental	0	0	0	0	0	0	0.0%	0	0.0%
Licenses, Permits & Fines	0	0	0	0	(56,390)	56,390	0.0%	(61,266)	0.0%
Other Revenues	0	0	0	0	8,018	(8,018)	0.0%	0	0.0%
Use of Money and Property	369,729	0	0	369,729	41,118	328,611	11.1%	57,051	15.3%
Grand Total	33,513,944	0	0	33,513,944	8,419,752	25,094,192	25.1%	8,226,906	26.1%

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. 09/30/2021	% of Amended Budget 09/30/2021
City Attorney	9,000	0	0	0	9,000	0	0	0	0.0%	7,071	100.0%
Engineering	0	0	0	0	0	0	0	0	0.0%	29,500	100.0%
Finance	1,111,223	0	0	18,537	1,129,760	244,228	55,091	299,319	26.5%	288,024	27.7%
Non-Departmental	23,073,631	0	0	408,556	23,482,187	4,011,372	18,422,543	22,433,915	95.5%	19,855,598	96.3%
Public Works	4,372,217	0	0	84,419	4,456,636	1,032,227	176,312	1,208,540	27.1%	1,217,414	28.3%
Transfers In/Out/Revenue	2,687,393	0	0	0	2,687,393	671,848	0	671,848	25.0%	0	0.0%
Grand Total	31,253,464	0	0	511,513	31,764,976	5,959,676	18,653,946	24,613,621	77.5%	21,397,607	74.9%

Sewer Fund

Revenue Categories	Adopted Budget	Amendments	Grants C/O	Amended Budget	Receipt	Outstanding	% Receipt	Receipt 09/30/2021	% Receipt 09/30/2021
Charges for Services	24,482,217	0	0	24,482,217	6,059,243	18,422,974	24.7%	5,057,910	24.5%
Intergovernmental	0	0	0	0	0	0	0.0%	0	0.0%
Licenses, Permits & Fines	0	0	0	0	(32,114)	32,114	0.0%	(42,085)	0.0%
Operating Transfer In	39,282	0	0	39,282	39,282	0	100.0%	10.76	100.0%
Use of Money and Property	205,863	0	0	205,863	28,396	177,467	13.8%	38,612	15.4%
Grand Total	24,727,362	0	0	24,727,362	6,094,807	18,632,555	24.6%	5,054,449	24.2%

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. 09/30/2021	% of Amended Budget 09/30/2021
City Manager	0	0	0	0	0	0	0	0	0.0%	0	0.0%
Engineering	0	0	0	0	0	0	0	0	0.0%	25,500	100.0%
Finance	711,305	0	0	18,537	729,842	171,858	55,091	226,949	31.1%	218,015	35.7%
Non-Departmental	10,437,767	0	0	27,145	10,464,912	2,381,358	5,160,054	7,541,412	72.1%	2,318,468	18.7%
Public Works	3,881,262	0	0	145,571	4,026,833	636,382	209,947	846,329	21.0%	712,789	24.3%
Transfers In/Out/Revenue	1,444,196	0	0	0	1,444,196	361,049	0	361,049	25.0%	0	0.0%
Grand Total	16,474,530	0	0	191,254	16,665,784	3,550,647	5,425,092	8,975,739	53.9%	3,274,772	18.7%



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Conduct a Public Hearing and Introduce an Ordinance Amending the Zoning Map of the City of Milpitas in Accordance with the Provisions of Section 3.03 of Chapter 10 of Title XI (Zoning) of the Milpitas Municipal Code to Change the Zoning Classification of Certain Parcels (APNs 086-38-021, -022, and -037), Located on the East Side of South Hillview Drive and Extending Approximately 1200 Feet Southerly From Los Coches Street, From the M2 Heavy Industrial Zoning District to the M1 Light Industrial Zoning District (Staff Contact: Ned Thomas, Planning Director, 408-586-3273)
Category:	Public Hearings-Community Development
Meeting Date:	11/15/2022
	<u>Recommendation:</u> (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 the Zoning map of the City of Milpitas in accordance with the provisions of Section 3.03 of Chapter 10 of Title XI (Zoning Ordinance) of the Milpitas Municipal Code to change the Zoning Classification of Certain Parcels (APNs 086-38-021, -022, and -037), located on the east side of South Hillview Drive and extending approximately 1200 feet southerly from Los Coches Street, from the M2 Heavy Industrial Zoning District to the M1 Light Industrial Zoning District. In addition, determine that the zoning ordinance amendment is exempt from environmental review under the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Sections 15183 (Projects Consistent with a General Plan and Zoning) and 15061(b)(3) (Common Sense Exemption).

Background:

In October 2019, the City Council adopted Ordinance 38.837 to restrict public assembly and other non-industrial uses in the M2 Heavy Industrial Zoning District. In late 2020, Planning staff spoke with the property owner of three parcels along the east side of South Hillview Drive regarding possible tenants for the three commercial/light industrial buildings on the parcels. Due to the restrictions on assembly and non-commercial uses in the underlying M2 Heavy Industrial Zoning District, the range of tenants allowed to rent smaller spaces in the existing buildings was limited. Moreover, existing tenants in the buildings were now identified as legal non-conforming uses, with restrictions on physical expansion or intensification of existing uses. Staff also noted that the M2 Zoning District in this area abutted two newer R1 Single-family Residential neighborhoods.

The purpose of the proposed zoning map amendment is to create an appropriate safety and noise buffer between the existing R1 Single-Family Residential neighborhoods located south of Los Coches Street and west of Interstate 680 and the adjacent M2 Heavy Industrial area located west of South Hillview Drive. Moreover, the proposed M1 Light Industrial zoning is more appropriate for the smaller size and narrower shape of the subject parcels and the existing multi-tenant commercial/light industrial buildings on these properties. The amendment will make the existing uses (offices, religious institutions, and other light industrial uses) on the parcels conforming and allow greater flexibility and a larger range of other commercial/light industrial uses as future tenants. No development proposals are considered at this time with this application.

Overview of Zoning Map Amendment:

Site and Surroundings

The project site encompasses three separate parcels, totaling 2.8-acres, located along the east side of South Hillview Drive and approximately 1200 feet southerly from Los Coches Street. All three parcels are currently

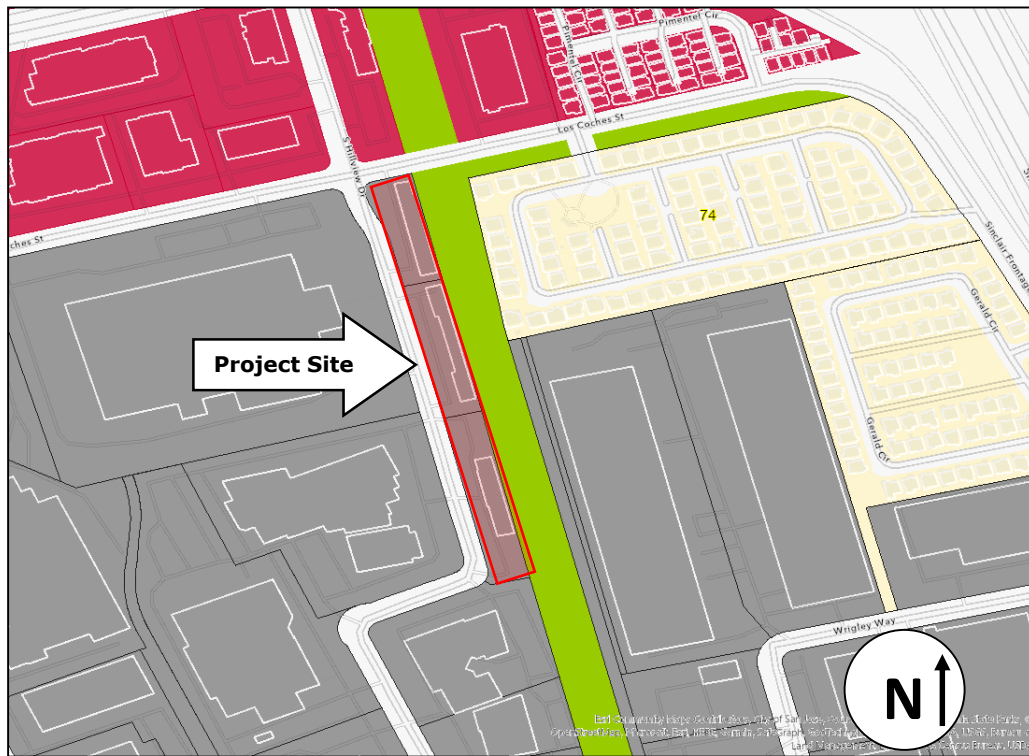
zoned M2 Heavy Industrial. The major roadways tangent to the site include Los Coches to the north and South Hillview Drive to the east. Berryessa Creek runs along the entire east side of the properties, and Yosemite Drive is the nearest major street to the south. High-transmission electrical lines run above the site with towers along the South Hillview Drive frontage.

The two northerly parcels are developed with single-story, multi-tenant commercial/light industrial buildings with surface parking lots below the electrical lines along South Hillview Drive. Current tenants include administrative and financial offices, commercial retail and professional uses, small research and development firms, and a radio station. The entire single-story building located on the southerly parcel is occupied by a church (Kingdom Hall). Development over the years has resulted in a transition from a typical industrial setting to one of an office and public/quasi-public setting. As noted above, the City Council amended the Zoning Ordinance in 2019 to protect manufacturing and employment in the M2 Heavy Industrial Zoning District by restricting non-industrial uses in these industrial areas. As a result, most current tenants at the subject site are now legal non-conforming uses, which have strict limitations in expansions and operations.

The surrounding zoning includes M2 Heavy Industrial to the immediate west and south, R1 Single-family Residential to the east, and TC Town Center to the north. The site abuts South Hillview Drive to the west and Berryessa Creek to the east. A vicinity map of the subject site location is shown on Figure 1, while a zoning map of the subject site location is shown on Figure 2.

Figure 1 – 158-300 S Hillview Dr (Aerial Image)



Figure 2 – 158-300 S Hillview Drive (Zoning Map)

Zoning Map Change

The proposed zoning map amendment will change the existing zoning from M2 Heavy Industrial to M1 Light Industrial. The M1 Light Industrial Zoning District is reserved for the construction, use and occupancy of buildings and facilities for office, research, limited and light manufacturing, as well as other compatible uses. The proposed zone change is consistent with the General Plan as both M1 and M2 fall under the General Plan land use designation of MFG Manufacturing.

Permitted and Conditionally Permitted Uses

The M1 Light Industrial Zoning District is an appropriate designation for the project area, not only because it will create an appropriate safety and noise buffer between the Single-Family Residential zones to the east and the Heavy Industrial zones to the west and south, but all existing uses within the project area are either permitted or conditionally permitted within the Light Industrial Zoning District. The change will allow the property owner to market and lease to a wider range of possible tenants and a larger variety of use classifications.

General Plan Conformance

The City's General Plan is the primary long-range planning document that provides the vision for the future growth and development of Milpitas. The zoning map amendment conform to the policies and standards in the City's General Plan, as demonstrated in Table 1.

Table 1: General Plan Consistency

Policy	Conformance
Land Use Element Policy LU 1-1: Support a full spectrum of conveniently located residential, commercial, public, and quasi-public uses that support and enhance business development and regional transportation objectives and promote the livability of residential neighborhoods.	The proposed zoning amendment will allow a larger variety of commercial, medical, quasi-public, and light industrial uses at the project site. The change promotes the livability of the adjacent residential neighborhood to the east because the types of uses allowed under the M1 Light Industrial Zoning District are more compatible than the uses allowed under the existing M2 Heavy Industrial Zoning District. Creating a safety and noise buffer between low-density residential and heavy industrial uses will also enhance the livability of the residential neighborhoods and the existing mix of uses along South Hillview Drive.
Land Use Element Policy LU 1-7: Recognize that the Land Use Map may be amended in accordance with State law to ensure that there is an adequate supply of commercial, business park, industrial, public facility, parks, residential, and other desired land uses to serve the City's needs.	The proposed zoning amendment allows a variety of commercial, medical, quasi-public, while also preserving the City's industrial land to serve the City's needs. The proposed zone change will allow staff to better implement City policies and actions. It will also allow the property owner/landlord a wider range or potential commercial and light industrial tenants in the existing multi-tenant buildings on the site.
Land Use Element Policy LU 5-6: In existing industrial and manufacturing areas adjacent to neighborhoods and other sensitive receptors, promote clean creative industrial uses that are environmentally sustainable and do not create nuisances such as noise and odors.	The proposed zoning amendment creates an appropriate buffer between the existing Low-Density Single-Family Residential neighborhoods to the east and the Heavy Industrial zones to the south and west. Rezoning the parcels to M1 Light Industrial will allow a wider variety of commercial, medical, quasi-public, and light industrial uses that are environmentally sustainable and more compatible with the existing building sizes and site design. The M1 Light Industrial zoning designation and its allowable types of uses are more appropriate for the project site due to its proximity to sensitive receptors and the residential neighborhood.

Findings: A finding is a statement of fact relating to the information that the City Council has considered in making a decision. Findings identify the rationale behind the decision to take a certain action. The following are the required findings for approval of a zoning amendment:

Zoning Amendment (Section XI-10-57.02(G)(3))

1. The proposed amendment is consistent with the General Plan.

As summarized in Table 1, the proposed amendment is consistent with the Milpitas General Plan because the new zoning designation creates an appropriate safety buffer between the R1 Low-Density Single-Family Residential and M2 Heavy Industrial zones along Hillview Drive. This zone change allows for more appropriate uses, such as a variety of commercial, medical, quasi-public uses, as well as clean light industrial uses to operate at the project site.

2. The proposed amendment will not adversely affect the public health, safety and welfare.

The proposed amendment will not adversely affect the public health, safety and welfare, as the new zoning designation will create a safety buffer between the R1 Low-Density Single-Family Residential neighborhoods to the east and M2 Heavy Industrial areas to the west and south. Moreover, the zoning change from M2 Heavy Industrial to M1 Light Industrial will allow a wider variety of commercial, medical, quasi-public, and clean light industrial uses that are environmentally sustainable and more appropriate for the project site and the public health, safety and welfare of nearby residents, workers, and customers.

Planning Commission Recommendation:

The Planning Commission considered the proposed Zoning Map Amendment at its meeting on October 26, 2022. Following discussion and public comment, the Planning Commission voted unanimously (5-0) to recommend that the City Council adopt the ordinance to amend the Zoning map of the City of Milpitas. The Commission's resolution in favor of adoption of the proposed ordinance is attached (Attachment B).

Policy Alternative:

Alternative: Do not adopt an ordinance amending the Zoning Map of certain parcels (APNs 086-38-021, -022, and -037), located on the east side of South Hillview Drive and extending approximately 1200 feet southerly from Los Coches Street, from the M2 Heavy Industrial Zoning District to the M1 Light Industrial Zoning District. The existing zoning designation would continue to be in effect.

Pros: There would be no changes to the zoning designation of the parcels (APNs 086-38-021, -022, and -037). Continuing the current zoning designation would mean that the existing businesses and uses on the project site would remain legal non-conforming, with no legal possibility of physical expansion.

Cons: Continuing the current zoning designation would mean that the existing businesses and uses on the project site would remain legal non-conforming, with no legal possibility of physical expansion. The property owner would only be able to lease any vacant space to those uses that are permitted or conditionally permitted under M2 Heavy Industrial. Due to the existing site conditions, the property owner has not been able to find appropriate tenants for the space.

Reason Not Recommended: If the proposed ordinance is not adopted, the City would miss an opportunity to create an appropriate safety and noise buffer between the existing single-family residential neighborhood located south of Los Coches Street and west of Interstate 680 and the adjacent M2 Heavy Industrial area located west of South Hillview Drive.

Fiscal Impact:

The City collects application fees for any Conditional Use Permits that may be required to allow prospective new businesses in specific locations and zoning districts, depending on how the use is classified and whether the zoning regulations allow the use outright or require a discretionary use permit. The City also collects fees for business license requests and occupancy permits for any new business within the City. The difference in fees collected would depend on what type of future businesses are proposed and in what locations, which is unknown at this time. However, any change in permit fee revenues associated with the zoning map amendment would likely be minimal.

California Environmental Quality Act:

Pursuant to Section 15061(b)(3) of the California Code of Regulations (CEQA Guidelines), staff has determined that the introduction and adoption of this ordinance is not subject to review under CEQA. CEQA Guidelines Section 15061(b)(3), also known as the "common sense exemption," states that CEQA only applies to projects that have the potential for causing a significant effect on the environment, and 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, the activity is not subject to CEQA. 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. As noted above, this project only includes a change to the land use designations. Further, no development is considered as a part of the project and none of the proposed amendments would directly or indirectly result in physical changes to the environment. Therefore, it can be seen with certainty that there is no

possibility that the zoning map amendment in question would have a significant effect on the environment; accordingly, the ordinance is exempt from CEQA review.

As a separate and independent basis, the project is also exempt from further environmental review under CEQA Guidelines Section 15183 (Project Consistent with General Plan, Community Plan, or Zoning), which applies to projects which are consistent with the General Plan for which an EIR was 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 site

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 an Ordinance amending the Zoning map of the City of Milpitas in accordance with the provisions of Section 3.03 of Chapter 10 of Title XI (Zoning Ordinance) of the Milpitas Municipal Code to change the Zoning Classification of Certain Parcels (APNs 086-38-021, -022, and -037), located on the east side of South Hillview Drive and extending approximately 1200 feet southerly from Los Coches Street, from the M2 Heavy Industrial Zoning District to the M1 Light Industrial Zoning District. In addition, determine that the zoning ordinance amendment is exempt from environmental review under the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Sections 15183 (Projects Consistent with a General Plan and Zoning) and 15061(b)(3) (Common Sense Exemption).

Attachments:

- A) Draft Ordinance
- B) Planning Commission Resolution No. 22-021

REGULAR**NUMBER:** XX.XXX

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING THE ZONING MAP OF THE CITY OF MILPITAS IN ACCORDANCE WITH THE PROVISIONS OF SECTION 3.03 OF CHAPTER 10 OF TITLE XI (ZONING ORDINANCE) OF THE MILPITAS MUNICIPAL CODE TO CHANGE THE ZONING DESIGNATION OF CERTAIN PARCELS (APNs 086-38-021, -022, and -037), LOCATED ON THE EAST SIDE OF SOUTH HILLVIEW DRIVE AND EXTENDING APPROXIMATELY 1200 FEET SOUTHERLY FROM LOS COCHES STREET, FROM THE M2 HEAVY INDUSTRIAL ZONING DISTRICT TO THE M1 LIGHT INDUSTRIAL ZONING DISTRICT.

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, 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, Section 3.03 of Chapter 10 Zoning of Title XI of the Milpitas Municipal Code, divides the City into zoning districts; and

WHEREAS, the City Council is the final authority on General Plan, Specific Plan, and Zoning amendments, including amendments to the Zoning Map; and

WHEREAS, the City wishes to create an appropriate safety and noise buffer between the existing R1 Single-Family Residential neighborhoods and M2 Heavy Industrial areas located south of Los Coches Street and west of Interstate 680 and the adjacent M2 Heavy Industrial area located west of South Hillview Drive; and

WHEREAS, the City has prepared a Zoning Amendment (“Amendment”) to the City’s Municipal Code; and

WHEREAS, on October 26, 2022, the Planning Commission of the City of Milpitas held a lawfully noticed public hearing to solicit public comment and consider the proposed Amendment, take public testimony, and recommended the City Council approve the project; and

WHEREAS, per Milpitas Municipal Code § XI-10-57.02(G)(3), the City Council finds that the Zoning Amendment set forth herein to be consistent with the General Plan, and specifically with Land Use Element Policy LU 1-1 (*Support a full spectrum of conveniently located residential, commercial, public, and quasi-public uses that support and enhance business development and regional transportation objectives and promote the livability of residential neighborhoods*), because the Project will allow a larger variety of commercial, medical, quasi-public, and light industrial uses at the project site. The change promotes the livability of the adjacent residential neighborhood to the east because the types of uses allowed under the M1 Light Industrial Zoning District are more compatible than the uses allowed under the existing M2 Heavy Industrial Zoning Direct. Creating a safety and noise buffer between low-density residential and heavy industrial uses will enhance the livability of the residential neighborhoods and the existing mix of uses along South Hillview Drive; and

WHEREAS, per Milpitas Municipal Code § XI-10-57.02(G)(3), the City Council finds that the Zoning Amendment set forth herein to be consistent with the General Plan, and specifically with Land Use Element Policy LU 1-7 (*Recognize that the Land Use Map may be amended in accordance with State law to ensure that there is an adequate supply of commercial, business park, industrial, public facility, parks, residential, and other desired land uses to serve the City’s needs*), because the Project allows a variety of commercial, medical, quasi-public, while also preserving the City’s industrial land to serve the City’s needs. The proposed zone change will allow staff to better implement City policies and actions. It will also allow the property owner/landlord a wider range or potential commercial and light industrial tenants in the existing multi-tenant buildings on the site; and

WHEREAS, per Milpitas Municipal Code § XI-10-57.02(G)(3), the City Council finds that the Zoning Amendment set forth herein to be consistent with the General Plan, and specifically with Land Use Element Policy LU 5-6 (*In existing industrial and manufacturing areas adjacent to neighborhoods and other sensitive receptors, promote clean creative industrial uses that are environmentally sustainable and do not create*

nuisances such as noise and odors), because the Project creates an appropriate buffer between the existing Density Single-Family Residential neighborhoods to the east and the Heavy Industrial zones to the south and west. Rezoning the parcels to M1 Light Industrial will allow a wider variety of commercial, medical, quasi-public, and light industrial uses that are environmentally sustainable and more compatible with the existing building sizes and site design. The M1 Light Industrial zoning designation and its allowable types of uses are more appropriate for the project site due to its proximity to sensitive receptors and the residential neighborhood; and

WHEREAS, per Milpitas Municipal Code § XI-10-57.02(G)(3), the City Council likewise finds that the Zoning Amendment set forth herein will not adversely affect the public health, safety and welfare, in that the Project, as the new zoning designation will create a safety buffer between the R1 Low-Density Single-Family Residential neighborhoods to the east and M2 Heavy Industrial areas to the west and south. Moreover, the zoning change from M2 Heavy Industrial to M1 Light Industrial will allow a wider variety of commercial, medical, quasi-public, and clean light industrial uses that are environmentally sustainable and more appropriate for the project site and the public health, safety and welfare of nearby residents, workers, and customers; 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); and

WHEREAS, as a separate and independent basis, the City Council 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.

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

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

SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 3.03

Title XI, Chapter 10, Section 3.03 (“Zoning Map”) is hereby amended, as attached hereto in **Exhibit 1**.

SECTION 3. ZONING MAP AMENDMENT FINDINGS (XI-10-57.02)

The City Council makes the following findings based on the evidence in the public record in support of Zoning Amendment No. ZA22-0006:

A. The proposed amendment is consistent with the General Plan.

The proposed amendment is consistent with the Milpitas General Plan because the new zoning designation creates an appropriate safety buffer between the R1 Low-Density Single-Family Residential and M2 Heavy Industrial zones along Hillview Drive. This zone change allows for more appropriate uses, such as a variety of commercial, medical, quasi-public uses, as well as clean light industrial uses to operate at the project site.

B. The proposed amendment will not adversely affect the public health, safety and welfare.

The proposed amendment will not adversely affect the public health, safety and welfare, as the new designation will create a safety buffer between the R1 Low-Density Single-Family Residential neighborhoods to the east and M2 Heavy Industrial areas to the west and south. Moreover, the zoning change from M2 Heavy Industrial to M1 Light Industrial will allow a wider variety of commercial, medical, quasi-public, and clean light industrial uses that are environmentally sustainable and more appropriate for the project site and the public health, safety and welfare of nearby residents, workers, and customers.

SECTION 4. 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 changes to land use designations. Further, none of the proposed amendments would directly or indirectly result in physical changes to the environment. 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 are consistent with the Milpitas General Plan because new zoning designation creates an appropriate safety buffer between the R1 Low-Density Single-Family Residential and M2 Heavy Industrial zones along Hillview Drive. This zone change allows for more appropriate uses, such as a variety of commercial, medical, quasi-public uses, as well as clean light industrial uses to operate at the project site.

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 5. 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 6. 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.

Exhibit 1: Zoning Map

Item # 18.



RESOLUTION NO. 22-021

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS RECOMMENDING THAT THE CITY COUNCIL APPROVE ZONING AMENDMENT ZA22-0006 TO CHANGE THE ZONING DESIGNATIONS OF THREE PARCELS, LOCATED ALONG THE EAST SIDE OF SOUTH HILLVIEW DRIVE AND APPROXIMATELY 1200 FEET SOUTHERLY FROM LOS COCHES STREET, FROM THE M2 HEAVY INDUSTRIAL ZONING DISTRICT TO THE M1 LIGHT INDUSTRIAL ZONING DISTRICT; AND DETERMINING THE ZONING AMENDMENT 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, Section 3.03 of Chapter 10 Zoning of Title XI of the Milpitas Municipal Code, divides the City into zoning districts; and

WHEREAS, the City Council is the final authority on General Plan, Specific Plan, and Zoning amendments, including amendments to the Zoning Map; and

WHEREAS, the City wishes to create an appropriate safety and noise buffer between the existing R1 Single-Family Residential neighborhoods and M2 Heavy Industrial areas located south of Los Coches Street and west of Interstate 680 and the adjacent M2 Heavy Industrial area located west of South Hillview Drive; and

WHEREAS, the City has prepared a Zoning Amendment ("Amendment") to the City's Zoning Map; 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 October 26, 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 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 Amendment No. ZA22-0006:

1. The proposed amendment is consistent with the General Plan.

The proposed amendment is consistent with the Milpitas General Plan because the new zoning designation creates an appropriate safety buffer between the R1 Low-Density Single-Family Residential and M2 Heavy Industrial zones along Hillview Drive. This zone change allows for more appropriate uses, such as a variety of commercial, medical, quasi-public uses, as well as clean light industrial uses to operate at the project site.

2. The proposed amendment will not adversely affect the public health, safety and welfare.

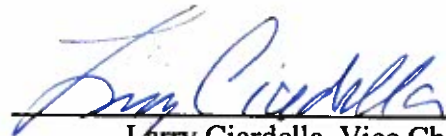
The proposed amendment will not adversely affect the public health, safety and welfare, as the new zoning designation will create a safety buffer between the R1 Low-Density Single-Family Residential neighborhoods to the east and M2 Heavy Industrial areas to

the west and south. Moreover, the zoning change from M2 Heavy Industrial to M1 Light Industrial will allow a wider variety of commercial, medical, quasi-public, and clean light industrial uses that are environmentally sustainable and more appropriate for the project site and the public health, safety and welfare of nearby residents, workers, and customers.

SECTION 4: Planning Commission Action

The Planning Commission of the City of Milpitas hereby adopts Resolution No. 22-021 recommending that the City Council adopt Zoning Map Amendment ZA22-0006 based on the above Findings.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on October 26, 2022.



Larry Ciardella, Vice Chair

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 October 26, 2022, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Mercedes Albana	X			
Dipak Awasthi	X			
Bill Chuan			X	
Larry Ciardella	X			
Alexander Galang	X			
Sonia Medina-Ashby	X			
Zeya Mohsin			X	



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Conduct a Public Hearing and Introduce an Ordinance Amending Section 13 “Special Uses” of Chapter 10 “Zoning” of Title XI of the Milpitas Municipal Code Relating to Outdoor Dining (Staff Contact: Ned Thomas, Planning Director, 408-586-3273)
Category:	Public Hearings-Community Development
Meeting Date:	11/15/2022
	Recommendation: (1) Conduct a public hearing and move to close the hearing following comments; (2) City Attorney shall read aloud the title of the Ordinance; and (3) Move to waive the first reading beyond the title and introduce an Ordinance adding Subsection 13.19 “Outdoor Dining” to Chapter 10 “Zoning” of Title XI of the Milpitas Municipal Code Relating to Outdoor Dining Areas and determine the Zoning Ordinance Text Amendment is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15183 (Projects Consistent with a General Plan) and 15061(b)(3) (Common Sense Exemption).

Background:

The proposed ordinance will establish standards for the location, design, and operation of outdoor dining areas in conjunction with restaurants and cafés throughout the city. These regulations will build upon and formalize the City’s Temporary Outdoor Dining Program that was established during the COVID-19 pandemic to help offset State-enacted restrictions on indoor dining. Under the proposed ordinance, restaurant owners or managers would be required to obtain approval of a Minor Site Development Permit for new outdoor dining areas, including the continuation of existing spaces created during COVID-19. The intent of the new regulations for permanent outdoor dining is to clarify and enhance the previous temporary standards and to encourage restaurants in Milpitas to provide safe, attractive, and well-designed spaces for customers to enjoy an al fresco dining experience, thereby promoting vibrant, pedestrian-oriented, high-amenity commercial areas in the city.

The proposed Zoning Ordinance Text Amendment would add a new Subsection 13.19 “Outdoor Dining” under Section 13 “Special Uses” of Chapter 10 “Zoning” of Title XI of the Milpitas Municipal Code. The proposed regulations will allow outdoor dining within specific off-street parking areas adjacent to a restaurant or café or on privately owned walkways, plazas, patios, and other outdoor spaces. In Milpitas, most outdoor dining areas are located on private property, often within parking lots for either “stand-alone” restaurants or restaurants in commercial shopping centers, so this ordinance amendment does not address outdoor dining areas in the public right-of-way (e.g., public sidewalks, on-street parking spaces, etc.). However, anticipating that interest in adding outdoor dining areas within the public right-of-way may increase as new, higher-density and mixed-use development occurs within the city, the Planning Department intends to prepare regulations for outdoor dining in the public right-of-way as part of the forthcoming comprehensive zoning update.

Overview of Draft Ordinance:

The proposed ordinance amendment will add a new Subsection with specific regulations relating to Outdoor Dining to Section 13 “Special Uses” to Chapter 10 “Zoning” of Title XI of the Milpitas Municipal Code). The new subsection would provide a definition for the term “outdoor dining area,” and these areas would be permitted in any zoning district where restaurants and cafés are permitted. Outdoor dining would be allowed on existing private sidewalks and walkways, patios, plazas, and off-street parking spaces (except required ADA-access spaces) adjacent to the restaurant or cafe. The proposed regulations would require safe and appropriate

setbacks from parking areas, vehicular drive aisles, and utilities, as well as maintaining sufficient paths or travel for pedestrians. Outdoor dining areas would also be required to maintain a two-foot setback from adjacent parking spaces and a five-foot wide pedestrian walkway from parking areas and public sidewalks to building entrances. In addition, they would be prohibited within required loading zones and stormwater treatment areas and must comply with all Fire Code requirements for emergency access.

Reduced Parking

The proposed regulations would allow a reduction in required off-street parking to accommodate outdoor dining areas occupying spaces previously used as parking stalls. In many of the City's multi-tenant shopping centers and other commercial areas, the amount of off-street parking provided exceeds the actual parking demand (and in some cases exceeds the number of off-street parking spaces required by the City's zoning regulations). Under the draft ordinance, in the Mixed Use Zoning District (MXD), High-Density Mixed Use Zoning District (MXD2), and Very High-Density Mixed Use Zoning District (MXD3), as well as in commercial zones within the Milpitas Transit Area (future Metro Milpitas) Specific Plan and Milpitas Main Street (future Gateway) Specific Plan areas, the off-street parking requirements stated in Subsection XI-10-53.09 of the zoning code could be reduced by up to 50 percent to accommodate outdoor dining areas in existing parking areas.

Consistent with Assembly Bill 2097, which was signed into law by Governor Newsom on September 22, 2022, and will become effective on January 1, 2023, no minimum parking requirements would apply to restaurants (or other commercial uses) located within one-half ($\frac{1}{2}$) mile of a major transit stop (a bus or rail transit stop with a service frequency interval of 15 minutes or less during morning and afternoon peak hours). Therefore, a restaurant within one-half ($\frac{1}{2}$) mile of a major transit stop would be able to replace any number of off-street parking spaces (other than required ADA-accessible spaces) with outdoor dining areas. In all other areas of the City, off-street parking requirements could be reduced by up to 15 percent to accommodate outdoor dining spaces of 800 square feet or less.

Safety and Design Standards

The draft ordinance also sets design standards for outdoor dining areas to ensure that these areas are safe and visually attractive, with any permanent seating or additions made from high-quality, durable materials. A substantial barrier would be required to separate outdoor dining areas from adjacent vehicular drive aisles and parking spaces. Appropriate barrier materials outlined in the regulations include wood or iron railings or fencing, decorative concrete barriers, and large planter boxes. Prohibited barrier materials include chain link fencing, corrugated metal, stanchions, retractable belts, screens, and small planters. Plywood or other unfinished materials used for barriers must be painted, stained, or covered with a finished surface. Solid portions of barriers would be limited to three feet in height; plexiglass or other transparent materials up to six feet in height could be placed on top of solid barriers.

Outdoor dining areas would be permitted to incorporate permanent overhead shade structures with a maximum height of 12 feet (e.g., pergolas) made of high-quality wood or metal, as well as non-permanent shade equipment such as awnings or umbrellas. Awnings and umbrellas would be allowed to display the name and logo of the restaurant, but other words, images, or advertising would not be permitted. Outdoor dining tables and chairs must also be durable and made of high-quality wood or metal (not inexpensive plastic or vinyl). Lastly, the business owner must incorporate decorative plants or flowers into the outdoor dining areas.

The proposed regulations will require the location and design of outdoor dining areas to comply with accessibility requirements per the Building Code and the Americans with Disabilities Act (ADA). The draft ordinance includes references to those requirements. Outdoor dining spaces must also comply with the Fire Code regarding fire safety and emergency access requirements. Minor Site Development Permit applications for outdoor dining areas would be subject to review and approval by the Milpitas Building and Fire Departments.

Operational Standards

The ordinance establishes basic operational standards for outdoor dining areas. First, hours for outdoor dining would be limited to the restaurant's general hours for serving meals, and in addition, no earlier than 7:00 am seven days per week and no later than 10:00 pm Sunday through Thursday (until 11:00 pm Friday and Saturday). Second, restaurant owners or managers would need approval from the California Department of Alcoholic Beverage Control (generally, a minor modification to the establishment's current ABC license is required) to serve alcohol in outdoor dining areas. Third, smoking would be prohibited in outdoor dining areas, as would food storage and preparation. Lastly, basic maintenance requirements for outdoor dining areas are outlined in the draft ordinance, intended to ensure that these spaces are kept clean and in a good state of repair and that plants and landscaping are well maintained.

Planning Commission Recommendation:

The Planning Commission considered the proposed zoning text amendment at its regularly scheduled public meeting on October 26, 2022. Following discussion and public comment, the Planning Commission voted unanimously (5-0) to recommend that the City Council adopt the ordinance related to permanent outdoor dining amendments. The Commission's resolution in favor of adoption of the proposed ordinance is attached (Attachment B).

Policy Alternative(s):

Alternative: Do not adopt the ordinance regarding regulations for permanent outdoor dining facilities in Title XI, Chapter 10 of the Milpitas Municipal Code. Existing restaurants and cafés would be required to remove their temporary outdoor dining facilities and would be unable to provide outdoor dining amenities in areas designated for vehicle parking.

Pros: By not approving the proposed ordinance, parking spaces would remain exclusively free and clear for vehicle parking.

Cons: Restaurants and cafés would not be able to expand their operations with minimal investment. High-quality outdoor dining areas that could encourage attractive and well-designed spaces for customers to enjoy an open-air dining experience, thereby promoting lively, pedestrian-oriented, high-amenity commercial areas in Milpitas, would be more difficult to establish.

Reason for Not Recommending: The amendments associated with permanent outdoor dining regulations will foster a high-quality outdoor eating experience for Milpitas restaurants and cafés, while preserving the health, safety, and welfare of the business owners and patrons.

Fiscal Impact:

The proposed zoning ordinance amendment will create permanent outdoor dining regulations for the City's mixed-use and commercial zone, in effect, increasing dining area and customer capacity for restaurants and cafes. Increased dining area equates to the potential of increased sales tax revenue for the City. Furthermore, all permanent outdoor dining areas will require a Minor Site Development Permit and potential building permit, which includes a fee to be paid to the City.

California Environmental Quality Act (CEQA):

The proposed text amendment to the Milpitas Municipal Code 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).

This ordinance would create new regulations related to outdoor dining in conjunction with restaurants and cafés (which are existing permitted uses in commercial areas under the zoning ordinance). It would enact standards for the location, siting, design, and operational elements of outdoor dining that are comparable to standards

other commercial land uses, and staff-level approval of a minor Site Development Permit would be required to ensure that outdoor dining areas comply with all applicable requirements. Therefore, it can be seen with certainty that there is no possibility that the proposed ordinance would have a significant effect on the environment; accordingly, the ordinance is exempt from CEQA review.

Recommendation:

- 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 adding Subsection 13.19 "Outdoor Dining" to Chapter 10 "Zoning" of Title XI of the Milpitas Municipal Code Relating to Outdoor Dining Areas and determine the Zoning Ordinance Text Amendment is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15183 (Projects Consistent with a General Plan) and 15061(b)(3) (Common Sense Exemption)

Attachments:

- A) Draft Ordinance
- B) Planning Commission Resolution No. 22-022

PLEASE NOTE:

This copy of Ordinance No. XX.XXX is a “redlined” version for your convenience. Text additions are designated by an underline and text deletions are designated with a strikethrough.

REGULAR

NUMBER: XX.XXX

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING SECTION 13 "SPECIAL USES" OF CHAPTER 10 "ZONING" OF TITLE XI OF THE MILPITAS MUNICIPAL CODE RELATING TO OUTDOOR DINING, 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:

Suzanne Guzzetta, 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, in 2020 the City established a Temporary Outdoor Dining Program, allowing the limited use of parking areas and other outdoor spaces on a temporary basis, to help local restaurants survive financially during the COVID-19 pandemic; and

WHEREAS, in July 2021 following the lifting of state and local COVID-19 health restrictions on indoor dining, and in light of interest among local restaurant owners in continuing to offer outdoor dining areas on a long-term basis, the City of Milpitas extended its temporary guidelines for outdoor dining until permanent regulations and a formal approval process for outdoor dining areas could be established; and

WHEREAS, the City desires to establish new standards and regulations for the location, site design, and operation of outdoor dining areas and to provide an efficient permitting process for outdoor dining as an accessory use to restaurants and cafes; and

WHEREAS, the City has prepared a Zoning Amendment (“Amendment”) to the City’s Municipal Code, adding a new Subsection 13.19 “Outdoor Dining” under Chapter 10 “Zoning” of Title XI; and

WHEREAS, on October 26, 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, this ordinance is exempt from the California Environmental Quality Act, Public Resources Code Section 21000, *et seq.* (“CEQA”), each as a separate and independent basis, pursuant to CEQA Guidelines Section 15183 (projects consistent with the General Plan) and Section 15061(b)(3) (no possibility of significant environmental effect).

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

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

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT

This ordinance is categorically exempt from environmental review under the California Environmental Quality Act (“CEQA”) in accordance with CEQA Guidelines Section 15061(b)(3) (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.

This ordinance would create new regulations related to outdoor dining in conjunction with restaurants (which are existing permitted uses in commercial areas under the zoning ordinance). It would enact standards for the location, siting, design, and operational elements of outdoor dining that are comparable to standards for other commercial land uses, and City staff review would be required to ensure that outdoor dining areas are appropriately designed and maintained and that they comply with all applicable requirements. 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.

As a separate and independent basis, this Ordinance is also categorically exempt from CEQA pursuant to CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning). The proposed zoning amendments serve to implement several goals and policies in the Land Use and Community Design Elements by allowing safe, well-designed outdoor dining areas in appropriate locations to support Milpitas restaurants and cafes while also promoting active commercial areas. Therefore, the proposed Amendment is consistent with the General Plan and is exempt from CEQA review.

SECTION 3. GENERAL PLAN CONSISTENCY

The Land Use and Community Design Elements of the City's General Plan include several policies and actions related to supporting local business development and promoting vibrant, livable commercial areas in Milpitas through land use standards and design guidelines that allow public gathering places, outdoor uses and amenities, and high-quality design in both the public and private realms. The proposed municipal code amendments would facilitate implementation of these policies by permitting and encouraging outdoor dining in well-designed and appropriately located spaces in commercial districts. Allowing high-quality outdoor dining spaces on a permanent basis would contribute to vibrant, visually appealing, and pedestrian-oriented commercial areas in Milpitas.

SECTION 4. AMENDMENT TO MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Section 13 ("Special Uses") of Chapter 10 ("Zoning") of Title XI of the Milpitas Municipal Code is hereby amended to add Subsection 13.19 as follows:

XI-10-13.19 – Outdoor Dining

A. Purpose and Intent. The purpose of the outdoor dining regulations is to increase opportunities for restaurants to expand dining area into outdoor spaces, supporting local businesses and enhancing dining experience for Milpitas residents and visitors; to promote active, vibrant, pedestrian-oriented commercial districts and shopping centers; and to ensure that outdoor dining spaces are safe, well designed, and attractive.

B. Definitions

1. Outdoor dining area: Any privately owned outdoor area serving as an extension of the indoor customer seating area for a café or restaurant, which occupies space adjacent to the business that was formerly used for vehicle parking, pedestrian circulation, or similar use unrelated to the seating or customers.

C. Review and Approval Procedures

1. New or modified outdoor dining areas on private property may be approved with a Minor Site Development Permit (Staff Review) pursuant to Subsection XI-10-57.03(B)(2) of this Chapter.
2. In cases where the underlying zoning district requires a Conditional Use Permit (CUP) for a restaurant, an existing establishment with an approved CUP may add or modify an outdoor dining area with approval of a Minor Site Development Permit. No amendment to the approved CUP shall be required.
3. Written permission from the owner of record of the subject property shall be required as part of the Minor Site Development Permit application for outdoor dining. This requirement shall apply to stand-alone restaurants as well as those located within a multi-tenant commercial center or mixed-use development.

D. Location and Siting Requirements

1. Outdoor dining shall be permitted in any zone where restaurants are a permitted use (or where restaurants are conditionally permitted and a CUP has been approved for the restaurant).
2. Outdoor dining areas may be established on privately owned lots subject to the following requirements:
 - a. Dining areas may be located within outdoor areas adjacent to restaurants, such as existing private sidewalks and walkways, patios, etc. A minimum five (5) foot wide path of travel shall be maintained along all pedestrian walkways from parking areas and public sidewalks to all public building entrances.
 - b. Outdoor dining areas may be located within, and may replace, existing off-street parking spaces (see also Subsection XI-10-13.19(E)) on privately owned parcels.
 - i. Parking spaces to be converted to outdoor dining areas must be immediately adjacent to the restaurant establishment. An outdoor dining area shall not be separated from the restaurant by any vehicular drive aisle.
 - ii. No existing accessible parking spaces required per Title 24, California Building Standards Code, and the Americans with Disabilities Act may be removed to accommodate outdoor dining areas.

- c. Outdoor dining areas shall be subject to the base zone regulations for minimum setbacks property lines. Any permanent canopies, pergolas or similar shade structures requiring a building permit shall be subject to base zone regulations for maximum lot coverage.
- d. Outdoor dining areas shall not be located within required loading zones or stormwater treatment areas, nor be located so as to obstruct access to utilities.
- e. Outdoor dining areas shall be subject to all emergency access regulations per the California Fire Code.
- f. Outdoor dining areas shall not be located in a manner that creates a potential safety hazard.

E. Allowed Reductions to Required Off-Street Parking

- 1. For restaurants located in the MXD, MXD2, and MXD3 zones or in any commercial zone within the Milpitas Metro Specific Plan or Milpitas Gateway-Main Street Specific Plan areas, total required off-street parking as specified in Subsection XI-10-53.09 – Off-Street Parking Required by Land Use may be reduced by up to 50 percent to accommodate new or expanded outdoor dining areas in existing parking areas.
- 2. No minimum parking requirements shall apply to restaurants located within one-half mile of the Milpitas Transit Center.
- 3. For restaurants located in any other area of the city, required off-street parking may be reduced by up to 15 percent to accommodate new or expanded outdoor dining areas in existing parking areas, provided that the size of the outdoor dining area is 800 square feet or less.
- 4. For multi-tenant commercial properties with shared parking, allowed reductions to required parking to accommodate outdoor dining shall be based on the total parking requirement for all uses and establishments on the subject property, not solely on the parking requirement for the restaurant(s) proposing to add or expand outdoor dining areas. The shared parking standards established in Section XI-10-53.11 shall apply to locations with shared parking arrangements.

F. Design Standards

- 1. Barriers and Materials
 - a. Outdoor dining areas shall be delineated by a substantial and durable barrier that separates the dining area from vehicular drive aisles and parking spaces.

- b. Materials. Barriers should be made from high-quality materials (e.g., wood or iron railing fencing, planter boxes, decorative concrete barriers).
 - i. Materials and design of barriers and associated amenities should be consistent with the design and appearance of the restaurant and complementary to the character and design of the surrounding district.
 - ii. Plywood or other unfinished materials used for construction of a barrier to delineate and protect an outdoor dining area shall be painted or covered in siding or other finished materials approved by the Planning Department.
 - iii. Chain link fencing, corrugated metal, unfinished wood materials, stanchions, retractable belts, screens, and small landscape planters are not acceptable materials for barriers for outdoor dining areas and shall be prohibited.
- c. Solid portions of barriers for outdoor dining areas shall be no more than three (3) feet in height. Transparent, shatterproof glass (plexiglass or similar material) may be placed above a three-foot solid barrier, up to a total maximum height of six (6) feet (for freestanding plexiglass over a solid barrier). If the outdoor dining area has a permanent shade or roof structure, plexiglass or other transparent materials may extend to the height of the ceiling.
- d. Barriers may be permanent or movable. If movable, they should be well secured and designed to support weight leaning against them.
- e. Barriers shall have one opening for emergency access, with a minimum width of 36 inches, for every 20 linear feet of barrier.
- f. Barriers adjacent to parking spaces shall be marked with reflective material, such as tape or plastic reflective strips.

2. Shade Structures, Tables and Chairs, and Other Amenities

- a. Permanent overhead shade structures (e.g. pergolas) may be allowed for outdoor dining areas. The design and location of any permanent overhead shade structure shall complement the main restaurant and shall be subject to review and approval by the Planning Department. All permanent overhead shade structures shall require a building permit.

- b. Permanent overhead shade structures shall be durable and made from high-quality materials as wood or metal. Plywood, corrugated metal, and corrugated polycarbonate are prohibited as materials for roofing or shade structures.
 - c. The maximum height for all overhead shade structures for outdoor dining areas shall be 12 feet.
 - d. Non-permanent shade equipment, such as umbrellas, fabric canopies, or retractable awnings, are permitted, provided they are made from high-quality materials and removed or stored when the outdoor dining area is not in use.
 - i. For awnings projecting from buildings, the minimum vertical clearance shall be eight (8) feet and the maximum extension from the face of a building shall be seven (7) feet.
 - ii. Awnings and umbrellas should have no words or advertising other than the name and logo of restaurant establishment.
 - e. Tables and chairs should be of a high-quality and visually appealing material such as wood or metal. Inexpensive plastic or vinyl tables and chairs are not permitted.
 - f. The layout of outdoor dining areas should incorporate spaces for landscape planters with decorative plants and flowers.
3. Traffic Safety. A minimum two (2) foot setback shall be required between an outdoor dining area barrier and any adjacent parking space(s).
4. Accessibility Requirements
- a. Outdoor dining areas shall have hard, non-slip surfaces, such as concrete, tile, stone, or wood/composite decking. Soft surfaces such as dirt, gravel, and lawn are not permitted.
 - b. If an outdoor dining area is located on a raised platform or in a sunken area, a ramp must be provided that meets the requirements of the California Building Code and the Americans with Disabilities Act.
 - c. A minimum of five (5) percent of the seats provided in an outdoor dining area shall be wheelchair accessible.

- d. Minimum dimensions for wheelchair accessible seating spaces shall be 30 inches wide by 30 inches deep. Access to all such seating spaces shall be provided via a path with a minimum unobstructed width of 36 inches.
- 5. Fire Safety. All outdoor dining areas shall comply with the requirements of the California Fire Code. Minor Site Development Permit applications for new or modified outdoor dining areas are subject to review and approval by the Milpitas Fire Department.
- 6. Lighting. No electrical wires for lighting elements shall cross the required clear path of travel along a public sidewalk or private pedestrian walkway. Solar lighting is encouraged for outdoor dining areas.
- 7. Signage. All restaurant signage shall comply with Section XI-10-24 – Signs of this Chapter. No additional signage shall be permitted in outdoor dining areas.

G. Operational Standards

- 1. Hours of Operation.
 - a. The hours of operation for outdoor dining areas shall be limited to the hours the restaurant is open for ordering and serving of meals.
 - b. In addition to Subsection XI-10-13.19(G)(1)(a), in no case shall outdoor dining be permitted before 7:00 am, seven (7) days per week, or after 10:00 pm Sunday through Thursday and after 11:00 pm Friday and Saturday.
- 2. Alcoholic Beverages.
 - a. The restaurant owner or manager shall coordinate with the California Department of Alcoholic Beverage Control (ABC) regarding alcohol sales in conjunction with outdoor dining.
 - b. The restaurant owner or manager shall obtain approval from ABC for a modified license to extend the permitted area for serving alcohol to include all outdoor dining areas associated with the restaurant and shall provide proof of such approval to the City of Milpitas Planning Department.
- 3. No smoking or vaping shall be permitted within outdoor dining areas.
- 4. Outdoor preparation and/or storage of food is not permitted within outdoor dining areas.

5. All live entertainment in outdoor dining areas is subject to the provisions of Subsections XI-5.04(E) and XI-10-6.06(B) of this Chapter.

6. Maintenance Requirements.

- a. Outdoor dining areas shall be kept clean and free of litter and debris at all times.
- b. All plants and landscaping shall be maintained in good health.
- c. All plexiglass or other transparent materials used as part of an outdoor seating barrier shall be regularly cleaned and provide a clear view from the outdoor seating area. Cracked, broken, or discolored materials are prohibited and shall be replaced immediately.

SECTION 5. 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.

SECTION 6. CERTIFICATION

The City Clerk shall either: (a) have this ordinance published in a newspaper of general circulation within 15 days after its adoption, or; (b) have a summary of this ordinance published twice in a newspaper of general circulation, once five days before its adoption and again within 15 days after its adoption.

SECTION 7. SEVERABILITY

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 8. NOTICE OF CEQA EXEMPTION

The City Council hereby directs staff to prepare, execute, and file with the County of Santa Clara Clerk a notice of CEQA exemption within five (5) working days of the adoption of this Ordinance.

RESOLUTION NO. 22-022

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS
RECOMMENDING THE CITY COUNCIL APPROVE ZONING TEXT AMENDMENT
NO. ZA22-0005 AMENDING AND ADDING A NEW SECTION TO TITLE XI,
CHAPTER 10 - ZONING OF THE MILPITAS MUNICIPAL CODE TO ALLOW
OUTDOOR DINING ON PRIVATE PROPERTY CITYWIDE ON A PERMANENT
BASIS, AND DETERMINING THE ORDINANCE TO BE EXEMPT FROM
ENVIRONMENTAL REVIEW PURSUANT TO CEQA GUIDELINES SECTION
15061(B)(3)**

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, in 2020 the City established a Temporary Outdoor Dining Program, allowing the limited use of parking areas and other outdoor spaces on a temporary basis, to help local restaurants survive financially during the COVID-19 pandemic; and

WHEREAS, in July 2021 following the lifting of state and local COVID-19 health restrictions on indoor dining, and in light of interest among local restaurant owners in continuing to offer outdoor dining areas on a long-term basis, the City of Milpitas extended its temporary guidelines for outdoor dining and announced its intention to establish permanent regulations and a formal approval process for outdoor dining areas; and

WHEREAS, the City has prepared a Zoning Amendment (“Amendment”) to the City’s Municipal Code, adding a new Section 13.19 (“Outdoor Dining”) to 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, on October 26, 2022, the Planning Commission held a duly noticed public hearing on the subject, 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;

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.

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. ZA22-0005:

1. *The proposed amendment is consistent with the General Plan.*

The proposed amendments are consistent with the Milpitas General Plan as demonstrated per the Table 1 below:

Table 1: General Plan Consistency

Policy / Actions	Conformance
<i>Land Use Element</i> <i>Policy LU 1-1:</i> Support a full spectrum of conveniently located residential, commercial, public, and quasi-public uses that support and enhance business development....and promote the livability of residential neighborhoods.	Consistent. Allowing well-situated, well-designed outdoor dining spaces in commercial areas will support thriving business for the city's restaurants and cafés and will help to promote fun, vibrant, and livable neighborhoods.

Policy / Actions	Conformance
<i>Land Use Element</i> <i>Policy LU 6-2:</i> As commercial centers are proposed for redevelopment, create a vibrant public realm through placemaking techniques like public gathering places, features, and focal elements including outdoor cafes and other outdoor uses and amenities.	Consistent. The proposed ordinance directly implements this policy of the General Plan's Land Use Element by facilitating and encouraging the creation of outdoor dining uses. This will contribute greatly to a vibrant public realm in Milpitas.
<i>Community Design Element</i> <i>Policy CD 2-2:</i> Continue to develop and implement design standards and guidelines...both in the private and public realms...to provide design and site planning approaches...that will add design excellence, visual quality, and interest to the community.	Consistent. The design standards included in the draft ordinance will help to ensure visual quality and design excellence for outdoor dining areas that are located on private property and are visible from the public realm. This will not only enhance the visual quality of privately owned outdoor dining spaces, but also it will serve to better integrate and connect these spaces with the public realm.
<i>Community Design Element</i> <i>Policy CD 9-4:</i> Incorporate outdoor plazas or other common areas that provide space for special landscaping, public art, food service, outdoor retail sales, or seating areas for patrons in retail settings appropriate to such pedestrian activity.	Consistent. The draft zoning amendments allow and encourage outdoor seating and outdoor food service in commercial areas that will help to attract customers and generate pedestrian activity.
<i>Economic Development Element</i> <i>Action ED-4a:</i> Encourage the use of outdoor public gathering spaces such as courtyards and plazas.	Consistent. The draft zoning amendments propose objective standards and high-quality materials to encourage a pleasurable experience with outdoor dining.

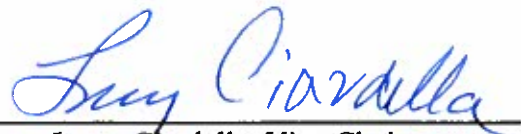
2. *The proposed amendment will not adversely affect the public health, safety and welfare.*

The proposed zoning amendments for outdoor dining areas will promote the public interest and protect public health and welfare because they include location and siting standards to ensure pedestrian and traffic safety and to maintain emergency access. They also limit the hours of potential noise and other impacts related to outdoor dining by establishing appropriate hours of operation (no later than 10 pm Sunday through Thursday and 11 pm on Friday and Saturday).

SECTION 4: Planning Commission Action

The Planning Commission of the City of Milpitas hereby adopts Resolution No. 22-022 recommending that the City Council adopt Zoning Text Amendment No. ZA22-0005 based on the above Findings.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on October 26, 2022.



Larry Ciardella, Vice Chair

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 October 26, 2022, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Mercedes Albana	X			
Dipak Awasthi	X			
Bill Chuan			X	
Larry Ciardella	X			
Alexander Galang	X			
Sonia Medina-Ashby	X			
Zeya Mohsin			X	



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Conduct a Public Hearing and Adopt a Resolution Certifying Election Results and Adding the Property Located at 1724 Sunnyhills Drive – Parcel 2 into Community Facilities District No. 2005-1 (Annexation No. 22) (Staff Contact: Steve Erickson, Engineering Director / City Engineer, 408-586-3301; and Roberto Alonzo, Principal Civil Engineer, 408-586-3316)
Category:	Public Hearings-Community Development
Meeting Date:	11/15/2022
	<u>Recommendation:</u> Conduct a public hearing and, following receipt of election results from the City Clerk, adopt a resolution certifying election Results and adding the property located at 1724 Sunnyhills Drive – Parcel 2 into Community Facilities District No. 2005-1 (Annexation No. 22).

BACKGROUND:

On October 14, 2020, the Planning Commission approved a Planned Unit Development Amendment (PA19-0002), Site Development Permit (SD18-0004), Tree Removal Permit (TR19-0028) and the Environmental Assessment (EA20-0005) for improvement of a portion of a 12.66-acre site located at 1724 Sunnyhills Drive (Project). The developer, Sunnyhills Investors, LLC, will construct 44 new units to the existing 171-unit Multi-Family Dwelling Complex. Work includes the demolition and reconstruction of a leasing/community building, construction of an additional 87 tenant parking spaces, new driveway to connect an existing drive aisle to a new Fire Access Road, and associated improvements. A Project Condition of Approval requires that the portion of the Projects 12.66-acre parcel to be improved through construction of 44 new dwelling units be annexed into Community Facilities District (CFD 2005-1) prior to building occupancy, and the 12.66-acre parcel was subdivided to complete the annexation process.

ANALYSIS:

The Projects 12.66-acre parcel was subdivided and the Parcel Map for the subdivision was filed with the County of Santa Clara Recorder on July 21, 2022, in Book 948 of Maps, Pages 32-36. The newly created Parcel 2 is currently vacant and is subject to the CFD annexation process as CFD Annexation No.22. The Santa Clara County Registrar of Voters has certified there are no registered voters residing within the boundaries of Parcel 2. Sunnyhills Investors, LLC, as the sole property owner, will vote to agree to CFD Annexation No. 22 on November 15, 2022. Following receipt of election results from the City Clerk, staff recommends the City Council adopt a Resolution (**Attached**) documenting the results of the election on Annexation No. 22 into CFD 2005-1. The annexation into CFD 2005-1 is subject to the provisions of the Mello-Roos Community Facilities Act of 1982, commencing with Section 53311 of the Government Code. While the Act has a number of requirements for annexation and imposition of the special tax, the Developer (as the sole landowner within the annexation territory) has agreed to waive many of the formalities. A copy of the waiver executed by the Developer is on file with the City Clerk.

POLICY ALTERNATIVE(S):

Alternative 1:

Deny Annexation No. 22 of Parcel 2 in to CFD 2005-1.

Pros: None

Cons: Denying the Annexation into the CFD No. 2005-1 would prevent the City from levying and collecting special taxes to fund public improvements and services service this development.

Reason for Not Recommending: To adequately fund the perpetual maintenance of public improvements and services serving this development, staff recommends adoption of the Resolution certifying election results and approving CFD 2005-1 Annexation No. 22 adding Parcel 2 to the CFD.

FISCAL IMPACT:

Adding the Projects Parcel 2 into CFD No. 2005-1 will allow the City to levy and collect special taxes to fund public improvements and services serving this new development.

California Environmental Quality Act (CEQA):

This project is in compliance with CEQA Guidelines section 15162 (Subsequent EIRs and Negative Declarations) in that an Initial Study/Mitigated Negative Declaration (IS/MND) conducted an environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA) titled "Sunnyhills Project Initial Study/Mitigated Negative Declaration" (IS/MND). On September 17, 2020, the city posted a Notice of Intent to adopt a mitigated negative declaration to the City's website and the Project Site. The IS/MND was available for public review from September 17, 2020, through October 7, 2020.

RECOMMENDATION:

Conduct a public hearing and, following receipt of election results from the City Clerk, adopt a resolution certifying election Results and adding the property located at 1724 Sunnyhills Drive – Parcel 2 into Community Facilities District No. 2005-1 (Annexation No. 22).

Attachment(s):

Resolution Certify Election Results

RESOLUTION NO. _____ -**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS, CALIFORNIA, CERTIFYING THE RESULTS OF AN ELECTION AND ADDING TERRITORY TO COMMUNITY FACILITIES DISTRICT NO. 2005-1 (PUBLIC SERVICES)**

(Annexation No. 22)

WHEREAS, the City Council of the City of Milpitas, California (the "City Council") has previously formed Community Facilities District No. 2005-1 (Public Services) ("CFD No. 2005-1") pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Act"), as amended, for the purpose of financing certain Public Services; and

WHEREAS, acting pursuant to the Act, the City Council also authorized by the adoption of Resolution No. 7521 the annexation in the future of territory to CFD No. 2005-1, such territory designated as Future Annexation Area, Community Facilities District No. 2005-1 (the "Future Annexation Area"); and

WHEREAS, at this time the unanimous consent to the annexation of certain territory located within the Future Annexation Area to CFD No. 2005-1 has been received from the property owner of such territory, and such territory has been designated as Annexation No. 22 (the "Territory"); and

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

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

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

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

WHEREAS, a map showing the Territory and designated as Annexation Map No. 17 (the "Annexation Map"), a copy of which is attached as Exhibit B hereto and incorporated herein by this reference, has been submitted to this legislative body.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the City Council of the City of Milpitas, California, acting as the legislative body of Community Facilities District No. 2005-1, as follows:

Section 1. Recitals. The above recitals are true and correct.

Section 2. Findings. This legislative body does hereby further determine as follows:

A. The unanimous consent as described in the recitals hereto to the annexation of the Territory to CFD No. 2005-1 has been given by the owner of the Territory and such consent shall be kept on file in the Office of the City Clerk of the City of Milpitas.

B. Less than twelve (12) registered voters have resided within the Territory for each of the ninety (90) days preceding the election date established for the each of the parcels located within the Territory, therefore, pursuant to the Act the qualified elector for the Territory shall be the "landowner" of the Territory as such term is defined in Government Code Section 53317(f).

C. The qualified elector of the Territory has voted in favor of the levy of special taxes on the Territory upon its annexation to CFD No. 2005-1.

Section 3. Territory. The boundaries and parcels of property within the Territory and on which special taxes will be levied in order to pay for the costs and expenses of authorized Public Services are shown on the Annexation Map as submitted to and hereby approved by this legislative body.

Section 4. Declaration of Annexation. This legislative body does hereby determine and declare that the Territory, and each parcel therein, is now added to and becomes a part of CFD No. 2005-1. The City Council, acting as the legislative body of CFD No. 2005-1, is hereby empowered to levy the authorized special tax within the Territory.

Section 5. Notice. Immediately upon adoption of this Resolution, notice shall be given as follows:

A. A copy of the Annexation Map as approved shall be filed in the Office of the County Recorder no later than fifteen (15) days after the date of adoption of this Resolution.

B. An Amendment to the Notice of Special Tax Lien (Notice of Annexation) shall be recorded in the Office of the County Recorder no later than fifteen (15) days after the date of adoption of this Resolution.

Section 6. Effective Date. This Resolution shall become effective upon its adoption.

PASSED AND ADOPTED this _____, day of _____, 2022, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi, City Attorney

CERTIFICATE OF ELECTION OFFICIAL AND STATEMENT OF VOTES CAST

[illegible]

The undersigned, ELECTION OFFICIAL OF THE CITY OF MILPITAS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DOES HEREBY CERTIFY that pursuant to the provisions of Section 53326 of the Government Code and Division 12, commencing with Section 17000 of the Elections Code of the State of California, I did canvass the returns of the votes cast at the

CITY OF MILPITAS
COMMUNITY FACILITIES DISTRICT NO. 2005-1
(PUBLIC SERVICES)
SPECIAL ELECTION
ANNEXATION NO. 22

held on the election date established for each parcel located within the territory included in Annexation No. 22.

I FURTHER CERTIFY that this Statement of Votes Cast shows the whole number of votes cast in the area proposed to be annexed to Community Facilities District No. 2005-1 for or against the Measure are full, true and correct.

VOTES CAST ON PROPOSITION 1: YES _____
NO _____

WITNESS my hand this _____ day of _____, 20__.

SUZANNE GUZZETTA
CITY CLERK
CITY OF MILPITAS
OF THE STATE OF CALIFORNIA

Exhibit B

Annexation Map

ANNEXATION MAP NO. 22 AND UPDATE OF ANNEXATION MAP NO. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 AND 21 OF CITY OF MILPITAS COMMUNITY FACILITIES DISTRICT NO. 2005-1 (PUBLIC SERVICES), COUNTY OF SANTA CLARA STATE OF CALIFORNIA AS RECORDED IN BOOK 41 OF MAPS OF ASSESSMENT AND COMMUNITY FACILITIES DISTRICTS AT PAGE 3 O.R. SANTA CLARA COUNTY



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive a Report on the Homekey Project at 1000 Hillview Court (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3056)
Category:	Community Development
Meeting Date:	11/15/2022
	<u>Recommendations:</u> Receive a Report on the Homekey Project at 1000 Hillview Court

BACKGROUND:

On July 16, 2020, the California State Department of Housing and Community Development (HCD) announced the release of the Project Homekey Notice of Funding Availability (NOFA) for \$600 million to purchase and rehabilitate housing, including hotels, motels, vacant apartment buildings and other buildings, and convert them into interim or permanent, long-term housing.

The County of Santa Clara's Office of Supportive Housing (County) and Jamboree Housing Corporation (Jamboree) jointly applied for and received Homekey funding to convert a hotel at 1000 Hillview Court into a 132-unit permanent supportive housing development (Hillview Court).

The project was funded through a combination of \$29.2M in Homekey grant funding, \$21.9M in 2016 Measure A funding from the County as a residual receipts loan and up to \$25M in 2016 Measure A funding from the County as a bridge loan. The project is also supported with 132 Section 8 Project Based Vouchers from the Santa Clara County Housing Authority. Finally, the County provides approximately \$1.7M in ongoing funding for supportive services and currently contracts with Abode Services.

The conversion of Hillview Court has taken place in two phases. The first phase included minimal interior repairs and leasing of 50% of the units to both meet the Homekey deadlines and to afford Jamboree sufficient space to complete the necessary improvements to the building. Tenants of the first phase started to move in December 2020 and slowly started to move out to other buildings in August 2021. The second phase of the project included the permanent conversion of the property and tenants of the second phase started to move in September 2021. Additional security elements and some facility improvements are anticipated to be completed by 2023.

As of November 1, 2022, the Project is at 93% occupancy, with 123 of the 132 units occupied. The remaining units are expected to be occupied by February 2023. Ten residents are affiliated with Milpitas while the remaining are affiliated with other cities and towns in the County.

Jamboree, as the Property and Project Owner, is responsible for the overall management and oversight of the property including property management and resident services. Jamboree contracts with Hyder for property management and security services, and contracts with Housing with Heart to provide resident services. The County is primarily responsible for providing referrals to the 132 units and to ensure that tenants are provided supportive services in accordance with the Supportive Housing Services Plan. These respective roles are memorialized in a No Cost Memorandum of Understanding between the County and Jamboree. The County provides intensive case management services at a ratio of 1 case manager for every 20 tenants.

On site services include educational and social activities and linkage to resources such as job training, health insurance, food programs, and government resources. Referrals are made to off-site services such as drug

and alcohol rehabilitation and mental health services, however these services are not provided on-site. The role of the case manager is to develop client-centered service plans to obtain and retain housing, improve health conditions, improve daily living activities and to achieve long-term stability. In addition, the case manager provides care coordination including assisting clients with transportation needs.

In June 2022, several members of the City Council requested periodic updates for this Project. An update was provided at the August 16, 2022 (<https://www.milpitas.gov/pdfs/council/2022/081622/Attachments.pdf>), City Council meeting; this report provides the second quarterly report.

At the August 16, 2022, City Council meeting, Jamboree, the Project owner provided information on the Project including capital improvements, occupancy and on-site supportive services, roles and responsibilities of the County, Owner, and Property Manager, and enforcement of lease agreement terms. Representatives from the County, Owner, and Property Manager answered several City Council questions including a request to provide additional information about the supportive services offered on site and to include success stories during the next update.

Police and Fire staff provided information about the significant increase in recent calls for service compared to historic data at the same site. Information was presented on types of calls for service, number of events in 2020, 2021, and 2022 and average time spent on events.

Based on the information presented, Council expressed concerns about the trend in increased calls for service and its impact on public safety resources and asked the Project team to consider improving services offered on-site, installing a fence to mitigate impact on the businesses in the adjoining business park, and tightening the enforcement process to ensure compliance with the lease terms and safety of the residents. Council also directed staff to prepare a letter for members of the City Council to send to Santa Clara County Supervisor Lee requesting funding for one police officer and an additional on-site case manager.

ANALYSIS:

This staff report provides information on updates related to the Project since August 2022. The updated calls for service data will be presented at the November 15 City Council meeting.

On August 31, 2022, a letter (Attachment 1) was sent on behalf of the City Council to Supervisor Otto Lee's office requesting funding for one police officer and increased staffing in the County's Office of Supportive Housing to proactively address issues at 1000 Hillview. The City has not yet received a response from the County.

On November 1, 2022, City staff from the City Manager's Office, Police, Fire Prevention, Office of Economic Development, and Housing met at the Project site with the Project team. Potential options for fencing were evaluated based on fire access, spatial configuration, and functionality. The Project team is currently planning the next phase of capital improvements and feasibility analysis regarding fencing between the site and the business park is under discussion. A fence between the site and the adjoining Embassy Suites hotel does not appear to be feasible because the hotel has a driveway easement, and a fence would significantly reduce their parking as currently configured. Furthermore, the concerns about trespassing have been raised in the business park not the hotel, thus there does not appear to be a need for a fence separating the Project site from the hotel. Staff are continuing to conduct outreach to the business park tenants to better understand the trespassing issues and will work with the Project team on addressing them. In addition to the fence, the Project team will be adjusting camera angles to increase coverage, installing additional cameras for a total of 67 interior and exterior cameras and adding additional lighting in corridors.

Since August 2022, Jamboree and Abode Services have also implemented new tools and new staff hours, enhanced coordination efforts, and provided new programming onsite.

New tools include: a "Who to Call" Document that empowers residents with knowledge of accessible resources other than 911, implementation of a walkie-talkie safety protocol to promote real-time response, clear

communication, and safety for staff and residents, and a “Calls to Service” log from the police department as well as an in-house log in order to better coordinate service efforts with residents.

New staff hours have been implemented by Abode Services. On-site staff hours have been expanded to cover Monday through Friday 9am to 8pm. On December 15, staff hours will also be expanded to Saturdays from 9am to 5 pm.

Abode Services is in the process of hiring additional staff to accommodate additional programming. New programming and services include:

1. Community Clean Up to decrease complaints from commercial neighbors and help residents feel a sense of pride in their community.
2. Alcoholics Anonymous/Narcotics Anonymous groups will be starting up onsite on December 15 to decrease overdose (OD) related calls
3. Increased Harm Reduction programming to reduce negative impacts from harmful behaviors,
4. No-Cost Uber rides are now available for medical appointments to decrease calls to 911 for non-emergency medical needs

Additionally, Safe Community Collaboration Meetings are being planned in coordination with the Police and Fire departments in order to decrease calls for service. Jamboree is also hosting bi-weekly meetings with Hyder, Abode Services, County staff, and the Police and Fire departments to help collaborate and address ongoing issues in real time and facilitate better coordination on follow up related to tenant issues. In October 2022, the Project also changed the on-foot security company to Good Guards.

At the November 15 City Council meeting, representatives from the County, Jamboree, and Hyder will be in attendance. Jamboree will provide an update including current occupancy status, planned future capital improvements, and any modifications to management and oversight roles and responsibilities, and enforcement process for compliance terms of lease agreements. Abode Services will also provide a summary of the supportive services they offer and a few tenant stories.

Police Department staff will present crime statistics from January 2020 through October 2022 including the number of calls for service, types of calls for service, and officer-initiated activity. Fire Department staff will also provide information about calls for service from January 2020 through October 2022.

FISCAL IMPACT:

There is no fiscal impact associated with receiving this report. However, the increased volume of Police and Fire calls for service at this site impacts response times to the rest of the Milpitas community and may necessitate investment in additional public safety resources in the future.

California Environmental Quality Act (CEQA):

Not applicable.

RECOMMENDATION:

Receive a Report on the Homekey Project at 1000 Hillview Court.

Attachment(s):

1. Letter to Supervisor Lee



MAYOR AND CITY COUNCIL

City of Milpitas Item # 21.

408.586.3000
455 E. Calaveras Blvd.
Milpitas, CA 95035
www.milpitas.gov

August 31, 2022

Supervisor Otto Lee
County of Santa Clara District 3
70 W. Hedding Street
10th Floor
San Jose, CA 95110

via E-Mail:
Wendy Ho, Chief of Staff
wendy.ho@BOS.SCCGOV.ORG

SUBJECT: Project Homekey Public Safety Resources Impact

Dear Supervisor Lee,

On behalf of the City Council, we are writing this letter to you to seek compensation for the significantly increased public safety response related to Project Homekey.

As you know, the County of Santa Clara and Jamboree Housing Corporation (Jamboree) jointly applied for and received Homekey funding to convert a hotel at 1000 Hillview Court into a 132-unit permanent supportive housing development (Hillview Court). The conversion of Hillview Court has taken place in two phases. Tenants of the first phase started to move in December 2020. As of August 9, 2022, the project is at 90% occupancy, with 120 of the 132 units occupied. The remaining units are expected to be occupied by October. As the number of tenants increased the City experienced a corresponding increase in public safety calls for services.

Specifically, as you can see from the attached slide deck, which was presented to Council at the August 16, 2022 City Council meeting, Police calls for service including officer-initiated activities increased by 155 calls for services, or 93.9%, from 165 in 2020 to 320 for just the first seven months in 2022. The majority of the calls for service in 2022 were related to welfare checks, disorderly conduct and disturbance calls, and suspicious activity calls. Similarly, Fire calls for services increased by 57 calls for services, or 190%, from 30 calls in 2020 to 87 for the first seven months in 2022. This increased demand for public safety services, which is expected to continue to rise once all Project Homekey units are occupied, has impacted the City's public safety response system. Therefore, as discussed by the City Council, the City needs to be reimbursed for the additional public safety cost incurred by Project Homekey activity.

As detailed in the attached Information Memorandum, by the end of 2022, the City is expected to incur about \$463,000 in public safety costs related to Project Homekey, an increase of \$349,000, or 300%, in comparison to CY 2020 costs of \$114,000. In other words, the City expects the cost for Fire Calls for Service to more than double and the cost for Police Calls for Service to increase by over 500% by year-end given the calls for service experience during the first seven months of 2022.



Given that the majority of the \$349,000 in estimated cost increases related to Project Homekey have been in the Police Department, the City expects to receive funding for FY 2022-23 retroactive to July 1, 2022, in the amount of \$293,000 for a new Police Officer position and, unless calls for services significantly reduce to pre-Project Homekey levels, this funding shall be continued annually. Further, the City Council requested that the County add staff capacity in the Office of Supportive Housing to proactively address issues at Project Homekey.

Sincerely,


Carmen Montano
Vice Mayor


Evelyn Chua
Council member

Attachments

Information Memo – dated 08/25/2022
Council Meeting Slide Deck – dated 08/16/2022

C: City of Milpitas City Council
County of Santa Clara Board of Supervisors
Steve McHarris, City Manager
Ashwini Kantak, Assistant City Manager
Walter C. Rossmann, Deputy City Manager
Jared Hernandez, Chief of Police
Brian Sherrard, Fire Chief
Dr. Jeffrey V. Smith, Santa Clara County Executive Officer
Ky Le, Santa Clara County Deputy County Executive
Consuelo Hernandez, Director, Office of Supportive Housing at County of Santa Clara County

MEMORANDUM

Police and Fire Departments

DATE: August 25, 2022

TO: Mayor and Council

THROUGH: Steve McHarris, City Manager 

FROM: Jared Hernandez, Police Chief
Brian Sherrard, Fire Chief

SUBJECT: Project Homekey Public Safety Calls for Service Cost Estimate

This Information Memorandum provides cost estimates for public safety calls to the Project Homekey site located on 1000 Hillview Court as requested by Council at the August 16, 2022 City Council meeting during the discussion of [Item #15](#), titled "Receive a Report on the Homekey Project at 1000 Hillview Court."

Background

As stated in the staff report, the Jamboree Housing Corporation (Jamboree) with funding from the State of California and Measure A acquired and converted a hotel at 1000 Hillview Court into a 132-unit permanent supportive housing development (Hillview Court). The conversion of Hillview Court has taken place in two phases. Tenants of the first phase started to move in December 2020 and slowly started to move out to other buildings in August 2021. The second phase of the project included the permanent conversion of the property and tenants of the second phase started to move in September 2021. As of August 9, 2022, the project is at 90% occupancy, with 120 of the 132 units occupied. The remaining units are expected to be occupied by October.

Calls for Service Estimated Cost

As part of the report to Council regarding the Homekey Project, staff presented public safety calls for services [data](#) for calendar year 2020, 2021 and 2022. Data for 2020 was included as a reference prior to conversion of site from a hotel to a supportive housing development.

Based on typical deployments of public safety staff to the types of incidents presented at the City Council meeting, staff calculated the estimated costs using the City Cost Allocation Plans most closely aligned to the respective calendar years. The cost allocation plans capture the fully burdened cost for each classification deployed to the Homekey Project such as police officers or firefighter/paramedics and supporting an incident such as a police lieutenant, fire battalion chief or dispatcher. Further, the fire apparatus cost related to the deployment is added using the California Office of Emergency Services apparatus hourly reimbursement rates.

As summarized in the table below, in comparison to Calendar Year (CY) 2020, the cost for just seven months in CY 2022 more than doubled. Extrapolating the CY 2022 seven months of costs incurred to the full calendar year, which would amount to \$463,000, the City is expecting to incur an additional public safety cost related to Project Homekey in the amount of \$349,000 in increase of a 300% increase in comparison to CY 2020. The cost for Fire Calls for Service increased by 108%; however, the cost for Police Calls for Service increased by 526%.

Table 1: Calls for Service Cost Estimates by Calendar Year (CY)

Calls for Service	CY 2020	CY 2021	2022 (Jan.-Aug.)	Expected Costs CY 2022	Expected Cost Increase from CY 2020	Expected % Increase of Annual Costs from CY 2020
Fire	\$60,000	\$37,000	\$73,000	\$125,000	\$65,000	108%
Police	\$54,000	\$119,000	\$197,000	\$338,000	\$284,000	526%
Total	\$114,000	\$156,000	\$270,000	\$463,000	\$349,000	306%

Next Steps

Staff will continue to track the staff hours related to Project Homekey calls for services and related cost information to the City Council as part of the requested quarterly Project Homekey Calls for Services reports. Further, per Council direction, and given that the majority of the \$349,000 in estimated cost increases related to Project Homekey have been in the Police Department, staff will prepare a letter for the Vice Mayor Montano and Councilmember Chua on behalf of the City Council to be sent to Supervisor Otto Lee requesting funding for a Police Officer position plus related non-personal expenditures in the amount of \$293,000.

Milpitas City Council Meeting

Item # 21.



Item # 15: Receive Report on the Homekey Project at 1000 Hillview Court

August 16, 2022

City of Milpitas

455 E. Calaveras Blvd., Milpitas, CA 95035



www.milpitas.gov



408-586-3000

Presentation Overview

➤ Presentation by Jamboree (Project Owner)

- Project Information
- Operating Practices and Standards
- Communication Plan
- Roles and Responsibilities
- Services
- Lease Terms and Enforcement Process

➤ Presentation by Police and Fire staff

- Calls for Service
- Staffing
- Types of Calls for Service
- Next Steps



Hillview Court Overview

Permanent Supportive Housing

Presenters

- George Searcy, Chief Impact Officer, Jamboree Housing
- Consuelo Hernandez, Director, County of Santa Clara, Office of Supportive Housing
- Paige Range, Hyder Regional Manager

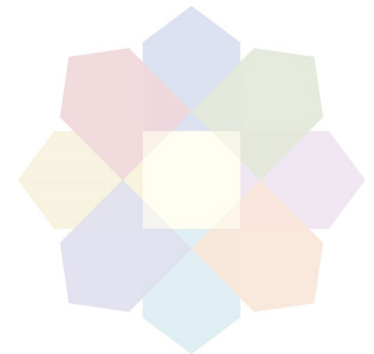
Hillview Court

- The Hillview Court property is a former Extended Stay America hotel. Jamboree, in partnership with the County of Santa Clara entered an agreement to redevelop the property into a permanent apartment housing community.
- The redevelopment converted the 146 room hotel into 134 units of supportive housing with kitchenettes and approximately 6,000 square feet of community services, case management offices, property management offices and community meeting areas.
- The first round of planned upgrades to the property will be completed by October 2022 and include exterior recreational space behind the apartment building.
- A second round of improvements is slated for funding in 2023 that will provide another set of security features, exterior and interior amenities and other physical improvements.

Jamboree is a Nonprofit Corporation founded in 1990

Mission

Jamboree delivers high quality affordable housing and services that transform lives and strengthen communities



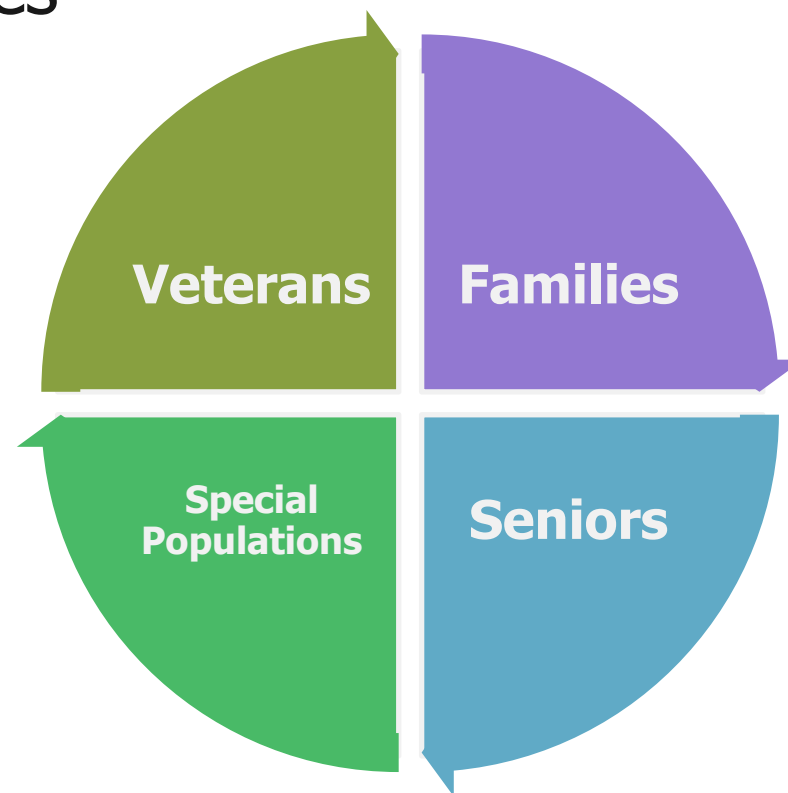
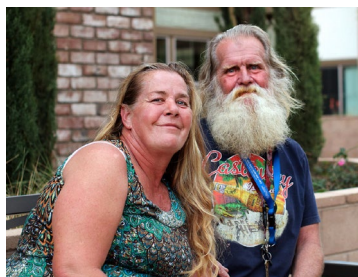
Jamboree



As of Q1 2022

Populations Jamboree Serves

20,000 residents
750 veterans
3,120 seniors





What is Supportive Housing?

Supportive Housing combines affordable housing with specific supportive services designed to help individuals and/or families live independently with support.

This type of housing is effective for individuals and families who have experienced homelessness and those with other special needs or disabilities.

Supportive services provided onsite offer care coordination, life skills support and assistance with requirements of living independently. If residents require clinical treatment or counseling services for behavioral health or physical health care, services staff coordinate the resident receiving those services offsite.

Hillview Court Operating Practices and Standards

Roles and Responsibilities

	Supportive Services (Abode & Jamboree)	Property Management (Hyder)
Prior to move-in	Coordinate with case manager; create move-in packet for resident	Coordinate with housing authority and case managers; sign lease with resident
1 st 30 days	Evaluate/assess needs; orient resident to the building and new environment	Review building procedures, safety, and house rules
1 st 90 days	Encourage resident to attend community meeting & onsite groups; assist with life skills	Collect rent, be available for questions or concerns
Rent	Assist with money management and budgeting; services should never accept rent	Collect rent; contact services of any late payments of rent; negotiate payment plans if resident falls behind in lieu of eviction

Roles and Responsibilities cont.

Supportive Services (Abode)		Property Management (Hyder)
Lease obligations	Abode staff educate resident on how to follow lease; review lease with resident when there are violations; ensure resident is provided necessary and sufficient support.	Monitor resident compliance with lease and house rules; issues perform or quit notices when there is a violation; speak to services staff when there is a violation
Resident Mental Health	Respond promptly to crises; provide linkage to crises service; develop intervention strategies and notify PM as appropriate. Contact police if threat to the resident or others including staff, reach threshold of verbal threat to health or safety or physical engagement.	Alert Abode Services staff of crisis and do not directly resolve. Contact police if threat to the resident or others including staff, reach threshold of verbal threat to health or safety or physical engagement.
Incidents/Emergencies in the apartment building	Notify PM immediately; assist with resident safety. Contact police if threat to the resident or others including staff, reach threshold of verbal threat to health or safety or physical engagement.	If there is a flood, fire, altercation or threat respond immediately and contact public safety accordingly; write incident report
Behavioral Issues	Identify behavioral issues; review issues with resident; develop behavioral contract; home visits; linkage to services	Enforce lease and house rules; inform services staff of observable behavior

Hillview Communication Plan

When	Lead	Who	Why
1x/week	Jamboree	Direct Service Providers (DSP): Jamboree, County Contracted service provider, and PM	Review the status of all tenants who live in the property. Items to be reviewed: General issues; Upcoming notices to tenants, unit inspections or events; New tenant move-in; Permanent tenant move-out; Temporary tenant move-out; and MHSA household review
2x/month	Property Management	Core team: Jamboree (including asset management) and PM	Property updates, asset management, housekeeping issues, notices, emergency updates, pest control, property interior/exterior, calendar events/activities, community meetings, upcoming supportive service events
Weekly to 1x/month	Jamboree	All Hands: Jamboree, all service providers, VA, County, PM, and Housing Authority	Property updates, PM concerns, security, housekeeping, notices, emergency updates, pest control, property interior/exterior, calendar events/activities, community meetings, upcoming supportive service events
TBD Public Safety Meetings	Jamboree	City of Milpitas Public Safety, Jamboree staff, Property Management, others as needed	Hillview has experienced a high volume of incidents that involve public safety personnel. In order to better build a joint partnership with the City a protocol to report on and develop action plans to reduce such incidents.

Security

- Access-controlled entry
- Visitation protocols for non-residents
- Security cameras on exterior and interior of buildings
- Jamboree reviewing internal policies with Hyder re: PD access
- Two full-time property management reside onsite
- Current 2 on-site security guards 24/7
- Camera placement plan will be reviewed with PD

Hillview Court Jamboree Operations Standards

- Property managers must notify Abode and Jamboree services staff of late rents, incidents, and any other issues relevant to a resident/household remaining stably housed.
- Notices to residents must be first approved by AM and delivered to residents. Services staff are available to respond to resident concerns about notices and will be informed when notices are distributed.
- Services staff inform property management when planning onsite activities and events to ensure effective coordination.
- Regular and frequent meetings between property management and services staff are required by Jamboree. Meetings review: incident/issues including public safety incidents, vacancies, building maintenance issues, policy and staff changes, and resident problems.





Roles and Responsibilities

Abode & Hyder

- Services can support PM by helping them work with residents on behavioral issues and crises.
- PM can report observable behavior from residents when services is not present.
- Services must comply with resident confidentiality requirements, but can creatively communicate with PM to express needs of a resident. When appropriate, services can obtain a release of information to discuss certain topics with PM.
- It is important that PM and services maintain at least bi-weekly meetings to discuss resident issues and coordinate plans. It is critical that both parties are on the same page and in the know about what is going on.

Abode & Hyder & Jamboree

- It is PM responsibility to enforce the lease, write notices, and serve notices. Jamboree has the ultimate responsibility to review eviction processes with the purpose of ensuring that the best outcome for the resident and the property is achieved.
- Services responsibility is to follow-up with residents and help residents process the notices and work towards compliance.
- Property Management reviews its planned resident communications with the services team and Jamboree staff to ensure internal coordination.

Enforcement of Lease

Any behavior that violates the terms of the lease agreement that results in a threat to the right of all residents to “quiet enjoyment” of their residence or to the health and safety of the resident(s) can and does result in a move to evict the resident.

The intent of this form of housing is to afford an environment where formerly homeless persons can receive support to live in community with others. Jamboree seeks to avoid evictions wherever possible as housing options for this population are extremely limited.

Hillview Court has successfully exited some residents to other housing/residential options when their behavior or lease violations create an unacceptable risk to health, safety or the well-being of the Hillview Court residents in total.

Enforcement of Lease

Property Management will formally notify services staff of lease violation.

- Property management enforces lease
- Services notified of formal lease violation prior to delivering to resident
- Services and PM determine if services needs to be present for violation delivering.
- Services and Property Management share goal of remediation of lease violation behavior when possible.
- PM and services review any concerns with residents jointly to create a solution
- PM follows-up with legal counsel as needed
- Proceeding to a formal eviction is the responsibility of property management (Hyder). This action is taken in consultation with Abode and Jamboree to ensure close coordination to manage the households exit to avoid, if possible, another episode of unsheltered homelessness.
- Eviction processes are required to follow State and Federal law. Eviction processes are reviewed by property management legal counsel and require a prescribed process.

Thank You!

Website: www.jamboreehousing.com/HillviewCourtMilpitas

Link to leave comments or: residentservices@jamboreehousing.com

Staff Update on Public Safety Services at 1000 Hillview Court

Project Homekey Impact on Public Safety Services

- Increase in Calls for Service
- Increase in Public Safety Staff Time
- Types of Calls for Service
- Next Steps

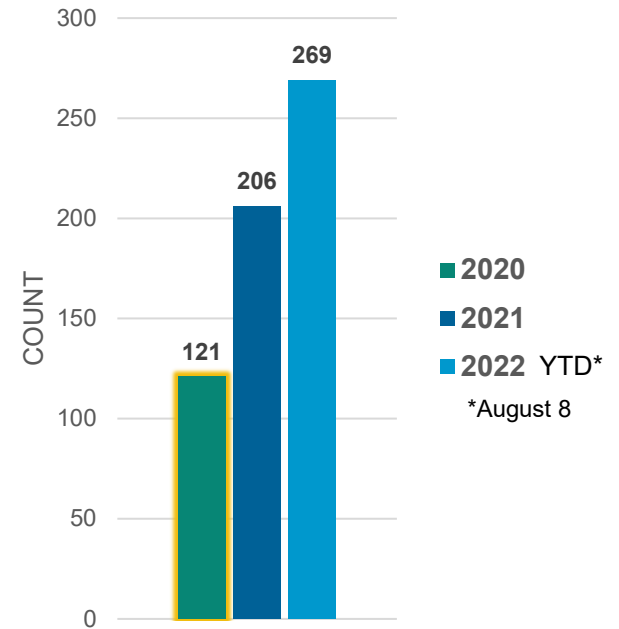


Calls for Service Data Police Department

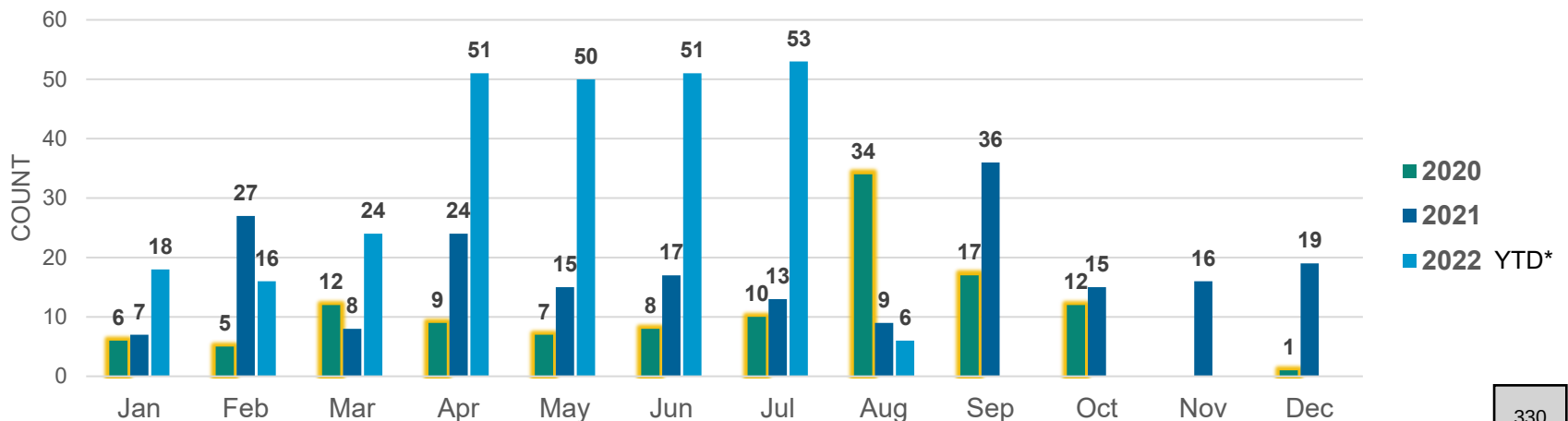
Total Events: Past 3-Years

- Does not include Patrol Checks
- Calls for service increased as occupancy increased
- Significant increase in calls for service over the past 4 months

Total PD Calls by Year



Total PD Calls by Month



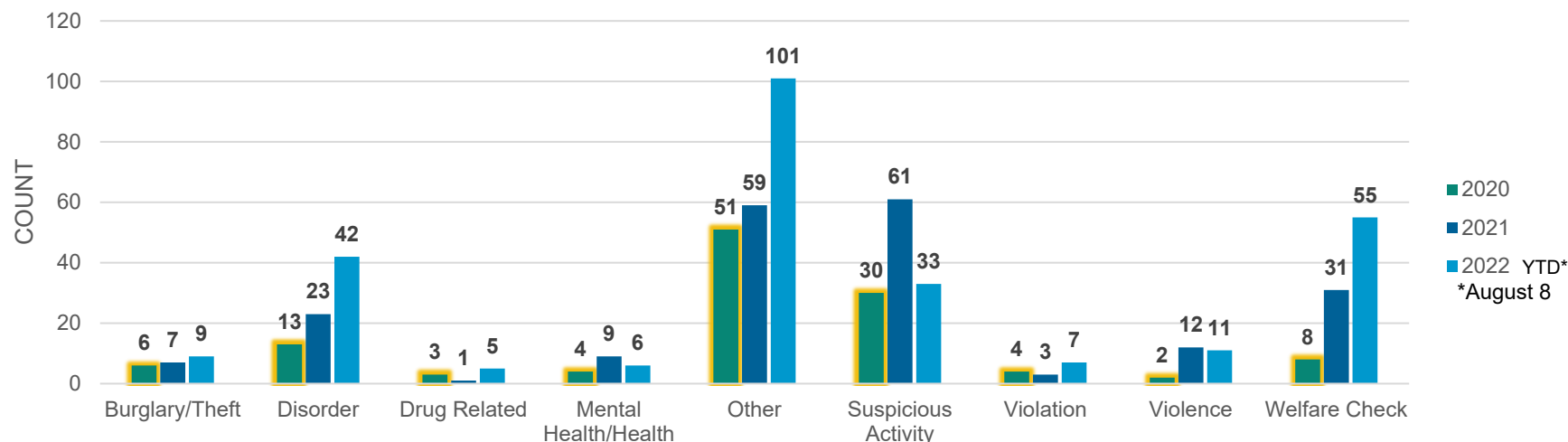
Type of Calls for Service

Item # 21.

Call Category	Examples
Burglary/Theft	Commercial Burglary, Residential Burglary, Found property, Grand theft, Petty theft, Receive/possess stolen prop, Recovered stolen vehicle, Robbery, Stolen vehicle Tampering with a vehicle, Theft, Vehicle burglary
Disorders	Disorder (combined events, family, fight, music, neighbor, unknown, weapon)
Drug Related	Controlled Substance, Possession, Possession for Sale, Under the influence
Mental Health/Health	Suicide, Attempted suicide, Mentally disturbed person, Possible dead body
Suspicious Activity	Suspicious circumstances, Suspicious person, Suspicious package, Suspicious vehicle, Suspicious alarm
Violation	Municipal code violation, Vehicle violation, Violation of protective order, Weapons Violation, Traffic hazard
Violence	Assault, Assault with deadly weapon, Battery, Resist Arrest, Domestic violence, Attempted Homicide, Rape, Carjacking
Welfare Check	Welfare check
Other	Arson, Fraud/Forgery, Sex Reg, Family Neglect/Abuse, Liquor Laws, Drunk, Gambling, DUI, Trespass, Prowling, Animal Noise, Accident, Warrants, Officer Fill, Courtesy Service, Civil Problem, Property Tows, E911 Hangup, Registrants, Vandalism, Court Order Violation

Police Events by Categories and Year

PD Calls by Categories by Year



► Other

- Arson, Fraud/Forgery, Sex Reg, Family Neglect/Abuse, Liquor Laws, Drunk, Gambling, DUI, Trespass, Prowling, Animal Noise, Accident, Warrants, Officer Fill, Courtesy Service, Civil Problem, Property Tows, E911 Hang-up, Registrants, Vandalism, Court Order Violation

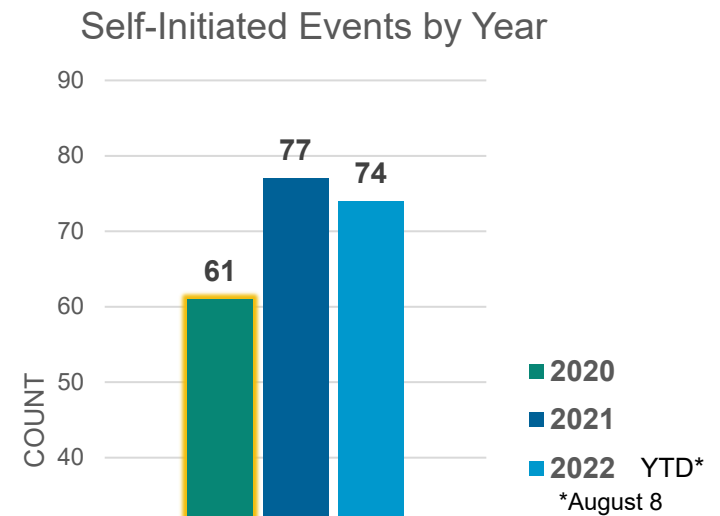
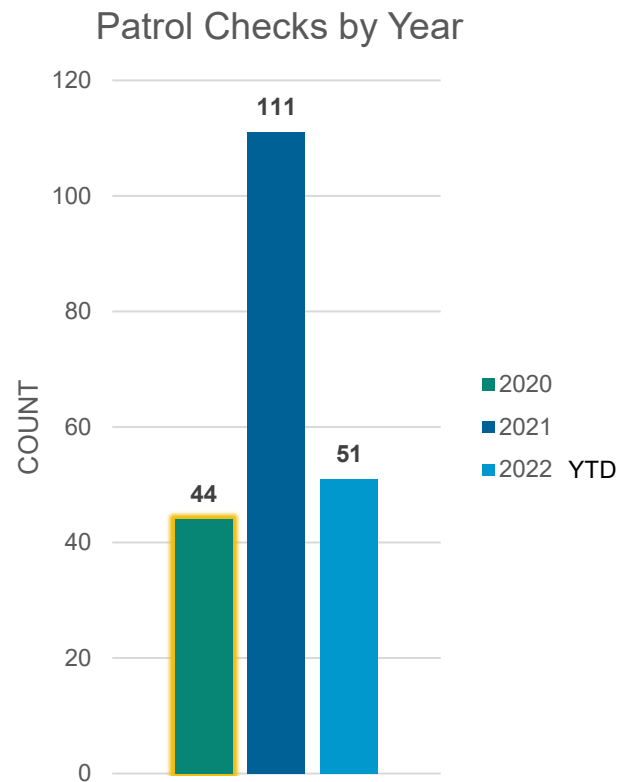
► Suspicious Activity

- Suspicious circumstances, Suspicious person, Suspicious package, Suspicious vehicle, Suspicious alarm.

► Welfare Check

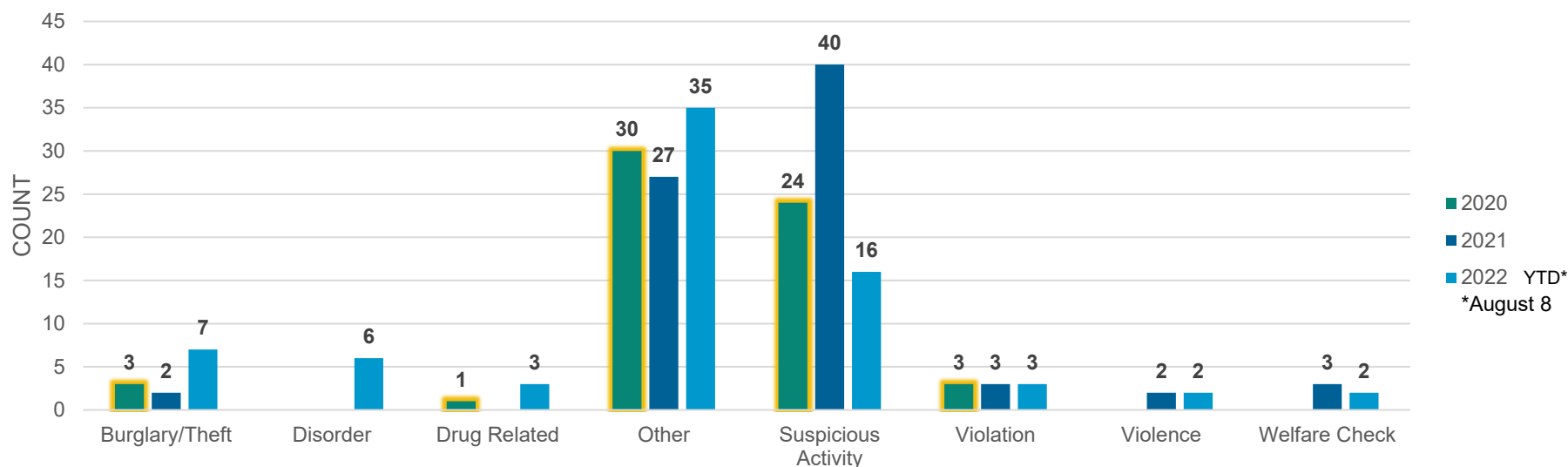
Officer Initiated Activity

- **Patrol Check:**
An officer proactively patrols the area.
- **Self-Initiated Event:**
An event generated by an officer.



Officer-Initiated Activity by Type and Year

Self-Initiated Categories by Year



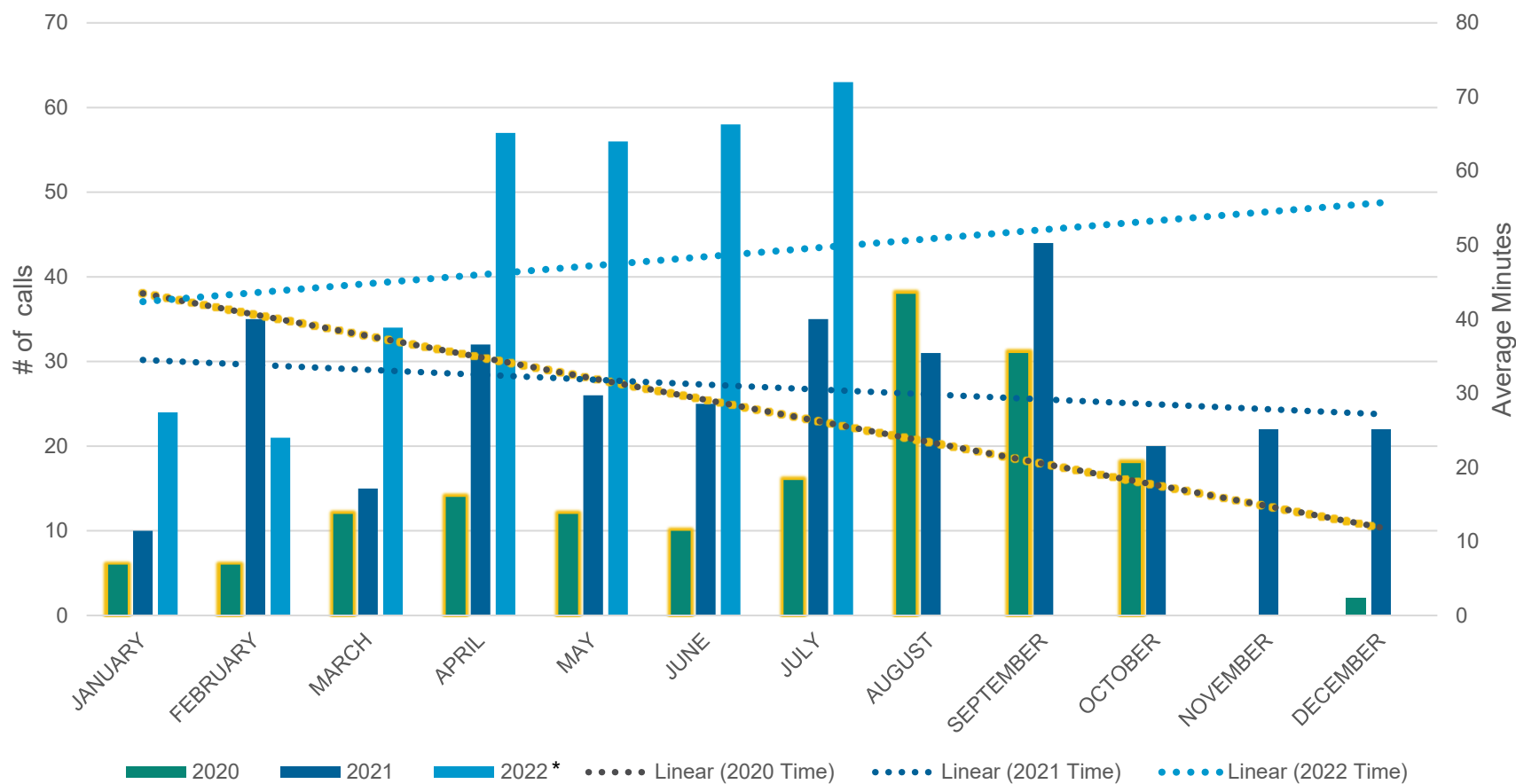
► Other

- Arson, Fraud/Forgery, Sex Reg, Family Neglect/Abuse, Liquor Laws, Drunk, Gambling, DUI, Trespass, Prowling, Animal Noise, Accident, Warrants, Officer Fill, Courtesy Service, Civil Problem, Property Tows, E911 Hang-up, Registrants, Vandalism, Court Order Violation

► Suspicious Activity

- Suspicious circumstances, Suspicious person, Suspicious package, Suspicious vehicle, Suspicious alarm.

Number of Calls for Service and Average Time Spent



*YTD August 8

Average Time Spent by Month and Year

1000 Hillview Calls 2021			
MONTH	Calls	Avg Time	TOTAL TIME
JANUARY	10	20:06	3 HRS 21 MIN
FEBRUARY	35	42:58	25 HRS 3 MIN
MARCH	15	20:25	5 HRS 6 MIN
APRIL	32	65:07	35 HRS 43 MIN
MAY	26	23:22	10 HRS 7 MIN
JUNE	25	49:40	20 HRS 41 MIN
JULY	35	16:52	9 HRS 50 MIN
AUGUST	31	16:54	8 HRS 43 MIN
SEPTEMBER	44	30:45	22 HRS 33 MIN
OCTOBER	20	27:13	9 HRS 4 MIN
NOVEMBER	22	18:36	6 HRS 49 MIN
DECEMBER	22	37:37	13 HRS 47 MIN
2021 TOTAL	317	32:09	169 HRS 51 MIN
			7 DAYS 1 HRS

2021 Avg/Month	26.4
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1000 Hillview Calls 2022			
MONTH	Calls	Avg Time	TOTAL TIME
JANUARY	24	64:11	25 HRS 40 MIN
FEBRUARY	21	20:34	7 HRS 11 MIN
MARCH	34	29:57	16 HRS 58 MIN
APRIL	57	47:46	45 HRS 22 MIN
MAY	56	74:32	49 HRS 33 MIN
JUNE	58	31:29	30 HRS 26 MIN
JULY	63	53:39	56 HRS 19 MIN
AUGUST	7	16:34	1 HRS 55 MIN
SEPTEMBER			
OCTOBER			
NOVEMBER			
DECEMBER			
2022 TOTAL	320	47:32	253 HRS 30 MIN
			10 DAYS 13 HRS

2022 Avg/Month	40.0
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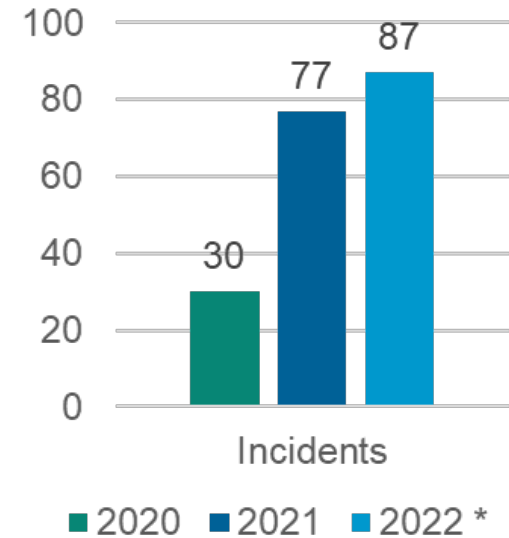
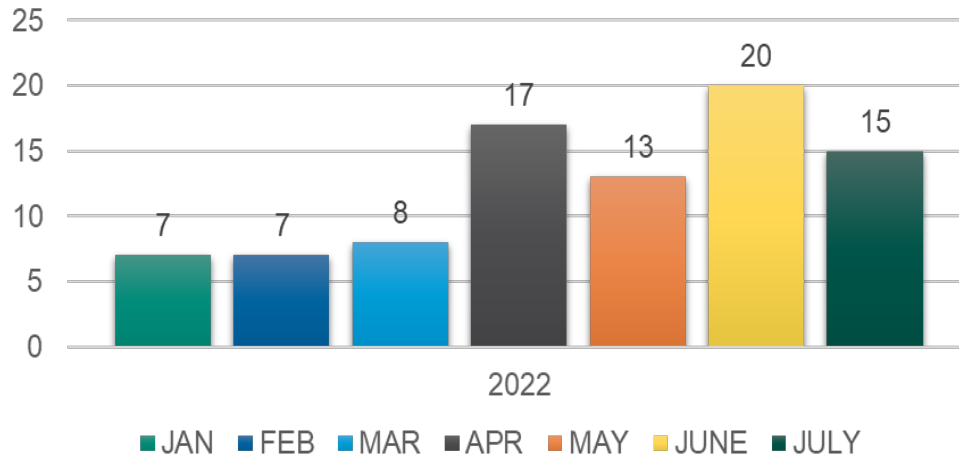
*Through August 8th

Calls for Service Data Fire Department

Total Fire Calls for Service: Past 3-Years

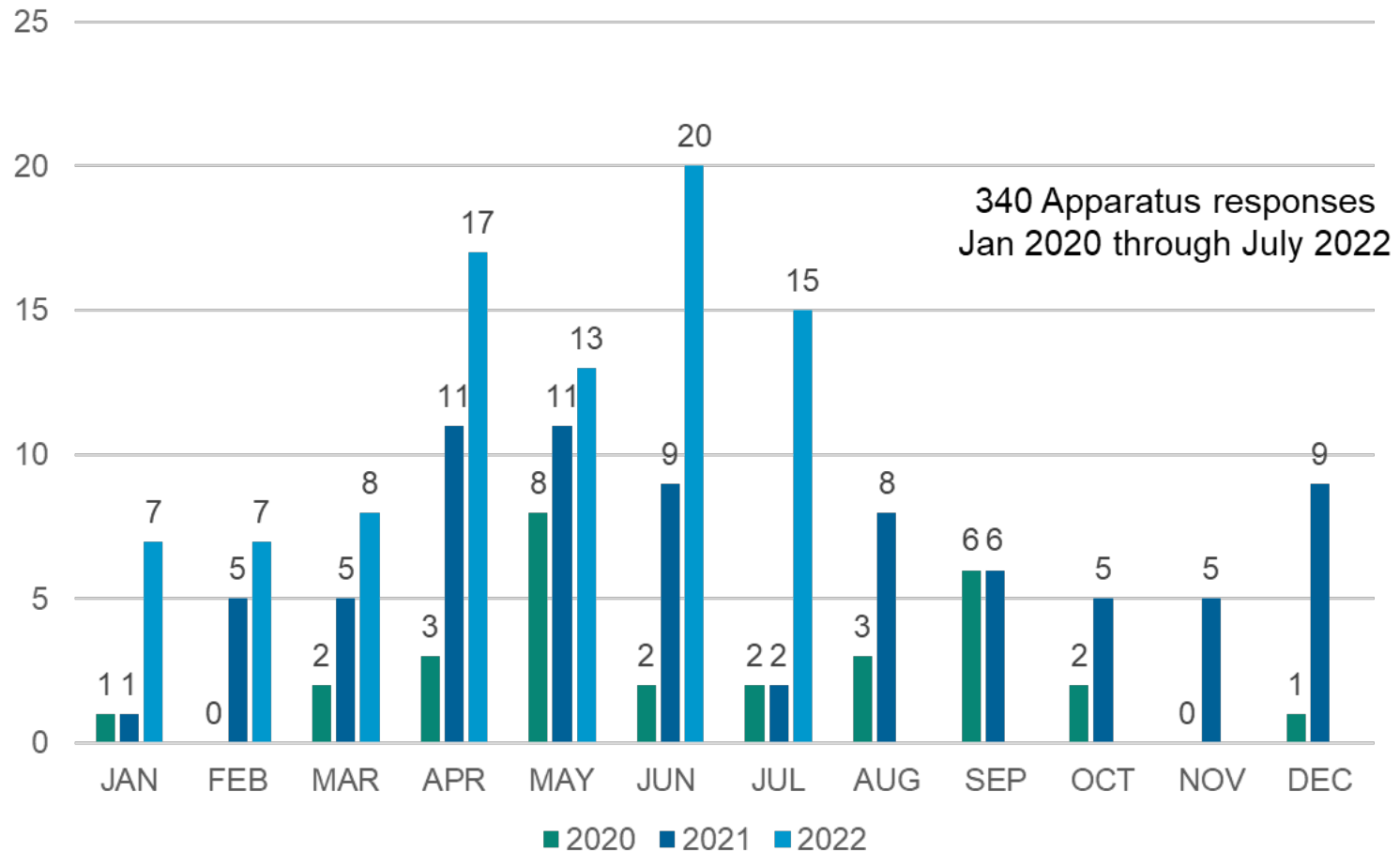
- Calls for service increased as occupancy increased
- Significant increase in calls for service in 2022

2022 Incidents



* data through July 31, 2022

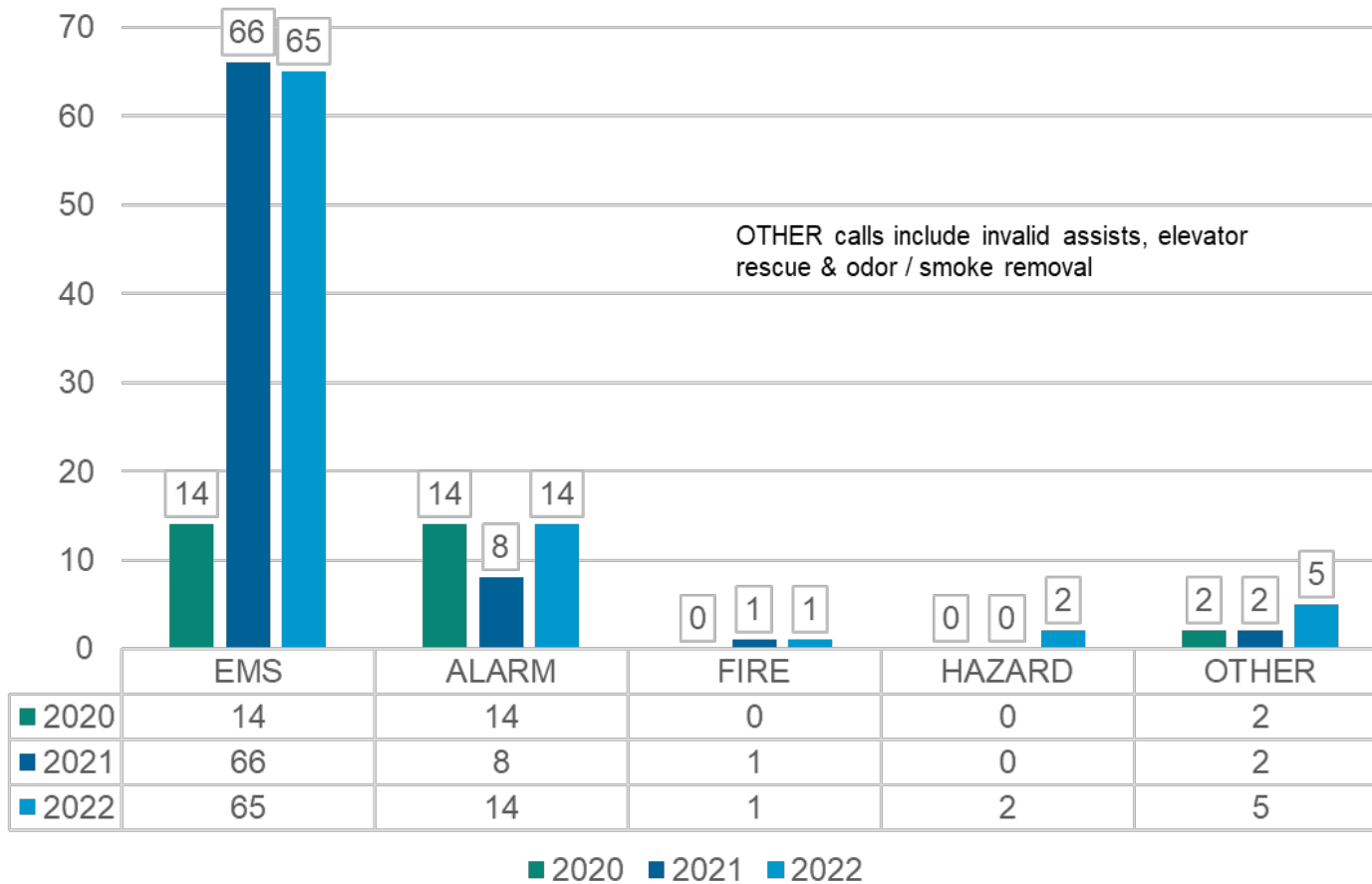
FIRE DEPARTMENT INCIDENTS BY MONTH



Type of Calls for Service

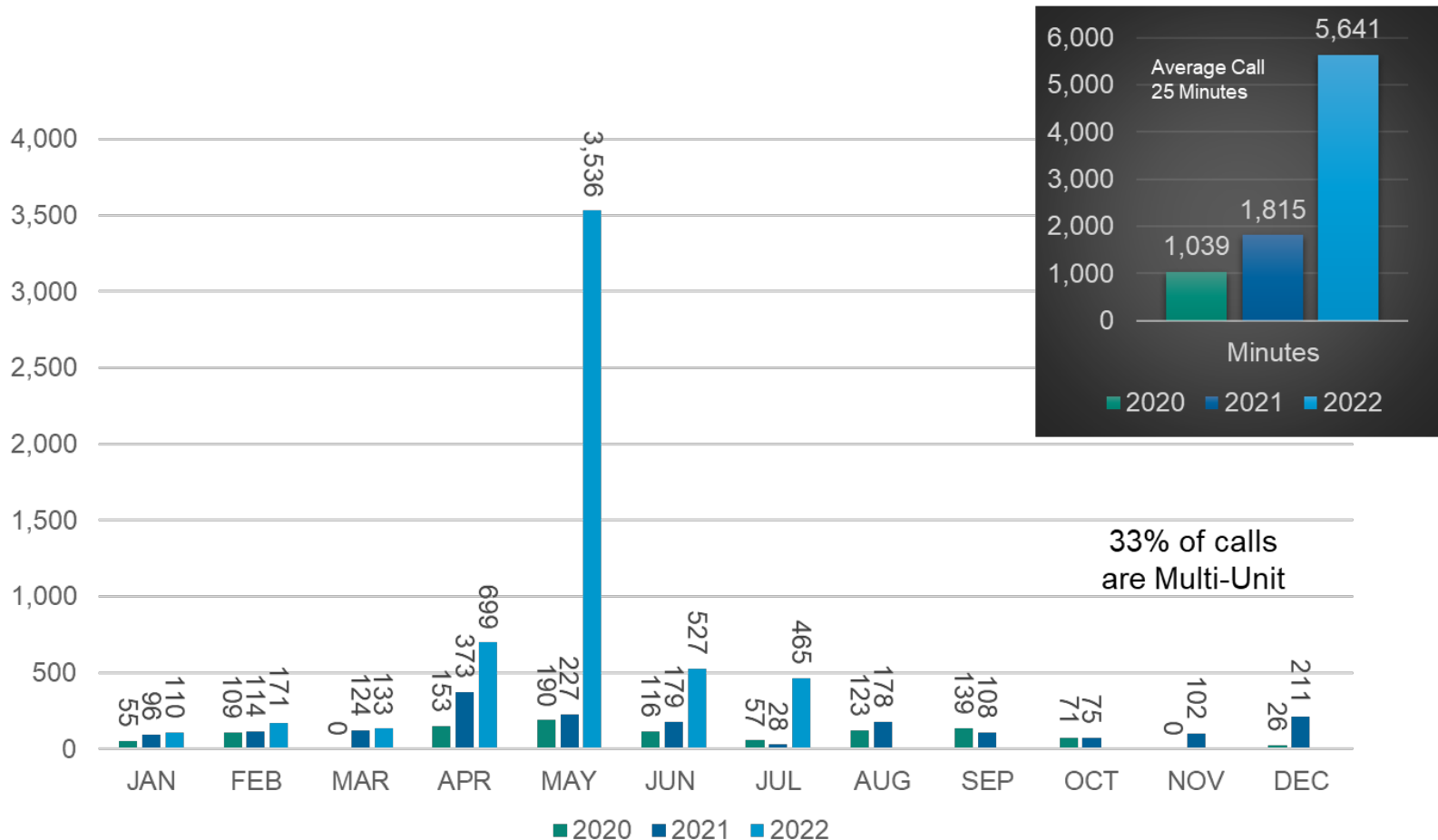
Call Category	Examples
EMS	Emergency Medical Services call (excluding vehicle accident)
ALARM	Smoke detector or alarm system activation
FIRE	Building or cooking fire (confined to container)
HAZARD	Hazardous condition
OTHER	Invalid assists, elevator rescue & odor / smoke removal

FIRE DEPARTMENT INCIDENT TYPE





FIRE DEPARTMENT APPARATUS DEPLOYMENT TIME (in minutes)



Next Steps

- Assign a liaison to collaborate with all stakeholders
- Establish a primary contact for each stakeholder group including afterhours contacts
- Share information to identify key issues and collaborate on solutions
- Quarterly reports to Council

Recommendation

Receive a Report on the Homekey Project at 1000 Hillview Court



City of Milpitas

455 E. Calaveras Blvd., Milpitas, CA 95035



www.milpitas.gov



408-586-3000



CITY OF MILPITAS AGENDA REPORT (AR)

Item # 22.

Item Title:	Approve the Prioritization of Additional Workplan Items City Council Policy (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053; Walter C. Rossmann, Deputy City Manager, 408-586-3012)
Category:	Leadership and Support Services
Meeting Date:	11/15/2022
	<u>Recommendation:</u> Approve the Prioritization of Additional Workplan Items City Council Policy.

BACKGROUND:

The City Council considers City priorities and associated workplan items as part of the annual budget process. However, outside of the budget process, individual members of the City Council may want to bring forward additional workplan items for consideration by the full Council. Currently, these items are requested by Members of the Council at City Council meetings, under the Announcements section. These items are placed on a list for a future Council discussion and action. On January 19, 2021, at a Special City Council meeting, in order to streamline the process, Council provided direction to staff to bring forward individual Council agenda item requests to Council, for prioritization, on a quarterly basis.

Since the beginning of this process, during five (5) Prioritization Sessions, the City Council has reviewed 292 items and approved 50 additional workplan items. During the last prioritization session, which was held on September 6, 2022, the City Council directed staff to return to the City Council in November 2022 with a City Council Policy formalizing the prioritization of additional workplan items initiated by Members of the City Council outside of the budget process.

ANALYSIS:

Consistent with Council direction, staff is bringing forward the attached draft Prioritization of Additional Workplan Items City Council Policy. Below, please find a summary discussion of the Policy including the purpose, policy statements, definitions and procedures.

As stated under the Purpose of the draft City Council Policy, the City Council recognizes that annually through the budget process department workplans are funded and approved and staff resources are budgeted and approve to execute these specific workplans with no capacity for other major requests. Further, the draft City Council Policy formalizes the process for requesting and approving additional workplan items requested by Members of the City Council consistent with the City Council approved Procedures and Protocols Handbook - specifically Chapter II, Section D titled "Duties of Mayor and Councilmembers," Subsection 6 titled "Requests for Staff Resources," and Chapter V, Section A titled "Agenda Order," Subsection 4 titled "Announcements and Future Agenda Items."

Reflective of City Council practice, the Policy Statements of the draft Policy are as follows:

- Members of the City Council workplan item requests to consider new programs, services, or requests for significant allocations of resources, shall be directed to the budget process to the maximum extent possible.
- From time to time, Members of the City Council may bring forward new workplan item requests for staff as part of the "Announcements and Future Agenda Items" section of the City Council meeting agenda.
- Individual City Councilmember workplan item requests are initially approved by consensus of the City Council.
- The City Manager determines whether a workplan item is a minor or major workplan item.
- Minor workplan items, approved by consensus, are referred to the City Manager for execution.

- A report of workplan items status is placed on the City Council meeting agenda. Although a status report is currently placed on every City Council agenda, staff is recommending bringing this update to Council as part of the quarterly prioritization process.
- Major workplan items, initially approved by consensus, will be placed on the agenda for Council discussion and prioritization on a quarterly basis.

To bring clarity to the Policy, the Policy defines:

- An additional or new workplan item request (herein referred as workplan item request) as an expansion of an existing program or service or a new program or service; it does not include routine administrative or operational tasks funded through the annual budget or compilation of data which is readily available through existing report functionalities of City systems.
- Minor workplan item requests generally require less than four hours of staff time to complete the task/project.
- Major workplan item requests generally require four or more hours of staff time to complete the task/project.

Finally, the draft Policy outlines the process for Members of the City Council requesting and approving additional workplan item requests and the City Manager's responsibilities, including but not limited to

- evaluating the staff time needed to complete workplan item requests
- classifying requests as minor or major workplan item requests.
- ensuring completion of minor workplan item requests while minimizing impact on existing operations given available staff capacity.
- preparing for the quarterly prioritization discussion for new potential major workplan items

As part of the quarterly prioritization discussion, the City Manager shall:

- provide sufficient detail for each new potential major workplan item, including but not limited to description of work effort, any actions taken to date, estimated resources and cost to complete the work, potential funding source, clarification or direction sought from Council, and other additional considerations including estimated time of completion and impacts on other workplan items.
- evaluate the number of new potential major workplan item requests, the status of Council approved major workplan items including workplan items approved through the annual budget, and staff capacity.
- limit, based on the aforementioned evaluation, the number of new workplan items between 30% to 50% of all City Council new workplan items requested during the last quarter.
- provide an update on previously approved items, including items underway and completed during the last quarter.

Consistent with past practices, the draft Policy stipulates that the City Council, through a structured process, approve by majority vote potential new major workplan items given existing workload and staff capacity. Further, the City Council shall refer all prioritized workplan items, which require a City Council budget appropriation action, to the annual operating or capital improvement program (CIP) budget process.

The Policy outlines various reporting requirements, such as keeping a list of all City Council work requests and their status, including items not approved by the City Council consistent with the City council approved records retention schedule and concludes that any Member of the City Council can bring forward again any workplan item requests, which the City Council did not approve by consensus or prioritize, for City Council consideration consistent with this Policy.

POLICY ALTERNATIVE(S):

Alternative 1: Do not approve the Policy

Pros: None

Cons: The City Council and staff will not be able to rely on a formalized process.

Reason for Not Recommending: The City Council and City Manager have successfully advanced additional high priority workplan items through existing practices and processes as formalized in the draft City Council Policy.

FISCAL IMPACT:

There's no fiscal impact as this item formalizes existing practices and processes.

California Environmental Quality Act (CEQA):

This item is not a Project under CEQA in accordance with CEQA Guidelines Section 15061(b)(3) (Common Sense Exemption) as it can be seen with certainty that a general discussion of funding priorities by the City Council will not have a significant effect on the environment. Further, the item is also not a Project pursuant to CEQA Guidelines Section 15378(b)(4) as it is a government fiscal activity that does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment. Although the use of funding will be discussed for various potential projects, any project scope and potential environmental analysis would be speculative to analyze at this time and future environmental analysis will be conducted for the various potential projects prior to the City making any commitment or approval of any project.

RECOMMENDATION:

Approve the Prioritization of Additional Workplan Items City Council Policy.

Attachment(s):

Draft City Council Policy



CITY OF MILPITAS

Item # 22.

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CITY COUNCIL POLICY

Policy No: Click or tap here to enter text.	PRIORITIZATION OF ADDITIONAL WORKPLAN ITEMS	Effective Date: 11/15/2022
Revision No: N/A	Policy Administrator: City Manager	Next Review Due: As Needed
Related Policies and Procedures: N/A	Approved by: Click or tap here to enter text.	Date Approved: Click or tap to enter a date.

1. PURPOSE

- 1.1. The City Council recognizes that annually through the budget process department workplans are funded and approved and staff resources are budgeted and approve to execute these specific workplans with no capacity for other major requests.
- 1.2. This Policy provides for
 - 1.2.1. referring minor workplan items for execution to the City Manager;
 - 1.2.2. a prioritization process of additional City Council workplan item requests consistent with the City Council Procedures and Protocols Handbook, Chapter II, Section D titled "Duties of Mayor and Councilmembers," Subsection 6 titled "Requests for Staff Resources," and Chapter V, Section A titled "Agenda Order," Subsection 4 titled "Announcements and Future Agenda Items."

2. POLICY

- 2.1. Members of the City Council workplan item requests to consider new programs, services, or requests for significant allocations of resources, shall be directed to the budget process to the maximum extent possible.
- 2.2. From time to time, Members of the City Council may bring forward new workplan item requests for staff as part of the "Announcements and Future Agenda Items" section of the City Council meeting agenda.
- 2.3. Individual City Councilmember workplan item requests are initially approved by consensus of the City Council.
- 2.4. The City Manager determines whether a workplan item is a minor or major workplan item.
- 2.5. Minor workplan items, approved by consensus, are referred to the City Manager for execution.
- 2.6. A report of workplan items status is placed on the City Council meeting agenda.
- 2.7. Major workplan items, initially approved by consensus, will be placed on the agenda for Council discussion and prioritization on a quarterly basis.

3. DEFINITION(S)

- 3.1. City Manager shall mean City Manager or designee.
- 3.2. An additional or new workplan item request (herein referred as workplan item request) generally refers to an expansion of an existing program or service or a new program or service; it does not include routine administrative or operational tasks funded through the annual budget or



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- compilation of data which is readily available through existing report functionalities of City systems.
- 3.3. Minor workplan item requests generally require less than four hours of staff time to complete the task/project.
- 3.4. Major workplan item requests generally require four or more hours of staff time to complete the task/project.

4. PROCEDURE(S)

- 4.1. Members of the City Council bring all additional workplan item requests for staff as part of the “Announcements and Future Agenda Items” section of the City Council meeting agenda.
- 4.2. The City Manager
- 4.2.1. evaluates the staff time needed to complete workplan item requests and classify the requests as minor or major workplan item requests.
- 4.3. The City Manager ensures completion of minor workplan item requests while minimizing impact on existing operations given available staff capacity.
- 4.4. Quarterly, the City Manager shall place a prioritization discussion for new potential major workplan items on a City Council meeting agenda.
- 4.4.1. In preparation for the discussion, the City Manager shall:
- 4.4.1.1 provide sufficient detail for each new potential major workplan item including but not limited to description of work effort, any actions taken to date, estimated resources and cost to complete the work, potential funding source, clarification or direction sought from Council, and other additional considerations including estimated time of completion and impacts on other workplan items.
- 4.4.1.2 evaluate the number of new potential major workplan item requests, the status of Council approved major workplan items including workplan items approved through the annual budget, and staff capacity.
- 4.4.1.3 limit, based on the aforementioned evaluation, the number of new workplan items between 30% to 50% of all City Council new workplan items requested during the last quarter.
- 4.4.1.4 provide an update on previously approved items including items underway and completed during the last quarter.
- 4.4.2. Through a structured process, the City Council shall approve by majority vote potential new major workplan items consistent with sections 4.4.1.2 and 4.4.1.3 of this Policy.
- 4.4.3. The City Manager shall remove all items not approved from the list of additional workplan items.
- 4.4.4. The City Council shall refer all prioritized workplan items, which require a City Council budget appropriation action, to the annual operating or capital improvement program (CIP) budget process.
- 4.5. The City Manager shall keep a list of all City Council work requests and their status including items not approved by the City Council consistent with the City council approved records retention schedule.
- 4.6. At various budget development meetings such as the preliminary budget study session or the CIP study session, the City Council shall by majority consensus or vote provide feedback or direction to staff whether to include a prioritized workplan item for funding in the budget or five-year CIP for the upcoming fiscal year.



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- 4.7. Any Mayor or City Councilmember can bring forward again any workplan item requests, which the City Council did not approve by consensus or prioritize, for City Council consideration consistent with this Policy.