



SPECIAL MEETING OF THE MILPITAS CITY COUNCIL

AGENDA

TUESDAY, DECEMBER 20, 2022

**CITY COUNCIL CHAMBERS, 455 E CALAVERAS BLVD, MILPITAS, CA
6:00 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

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_T61VWxrtRmKdHbO6_WJK7q

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

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.

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.

MILPITAS CITY COUNCIL CODE OF CONDUCT

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

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

PLEDGE OF ALLEGIANCE

INVOCATION (Mayor Elect Montano)

AGENDA ITEMS (6:10 PM)

- 1.** Receive Report of Municipal Election Results of November 8, 2022, and Adopt a Resolution to Certify Final Results of Candidate and Ballot Measure Election (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Recommendation: (1) Receive the report of election results and voter turnout; and (2) Adopt a resolution confirming the official canvass of election returns and declaring the results of the General Municipal Election held on November 8, 2022.

- 2.** Presentation to Outgoing Mayor and Councilmember and Remarks

- 3.** Ceremonial Swearing-In of Newly Elected City Officials

- Mayor Carmen Montano
- City Councilmember Garry Barbadillo
- City Councilmember Hon Lien

*****There will be a short break prior to the next item*****

- 4.** Elect New Vice Mayor (Contact: Mayor Carmen Montano, 408-586-3029)

Recommendation: Receive recommendation from Mayor Montano of one City Councilmember to serve as Milpitas Vice Mayor for one year, and move to approve the new Vice Mayor.

PUBLIC FORUM (7:05 PM)

Members of the public are invited to speak on any item that does not appear on today's agenda. Comments will be limited to three minutes or less at the Mayor's discretion. When called to speak, you are encouraged to state your name for the record. As an item not listed on the agenda, no action can be taken, however the City Council may instruct the City Manager to place the item on a future meeting agenda.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

READING OF THE CITY COUNCIL CODE OF CONDUCT (Mayor Montano)

APPROVAL OF AGENDA

CONSENT CALENDAR (7:35 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.

- C5.** Receive City Council Calendar of Meetings for December 2022 and January 2023 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Recommendation: Receive City Council Calendar of Meetings for December 2022 and January 2023.

- C6.** Approve City Council City Council Regular Meeting Minutes of December 6, 2022 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

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

C7. 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.

C8. 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.

C9. 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.

C10. Approve and Authorize the City Manager to Execute an Encroachment and Maintenance Agreement with Milpitas – District 4 Owner, LLC, for the Perpetual Maintenance and Operation of Private Sidewalk Lighting Improvements within the City Right-of-Way Located at 150 Market Street (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 an Encroachment and Maintenance Agreement with Milpitas – District 4 Owner, LLC, for the perpetual maintenance and operation of private sidewalk lighting improvements within the city right-of-way located at 150 Market Street.

C11. Adopt a Resolution Reviewing and Accepting the Annual Development Impact Fee Annual Report for the Calaveras Boulevard Widening Traffic Impact Fee, the Transit Area Specific Plan (TASP) Impact Fee, and the Storm Drain Fee for the Fiscal Year Ended June 30, 2022 (Staff Contact: Lauren Lai, Finance Director, 408-586-3111)

Recommendation: Adopt a resolution consistent with the Mitigation Fee Act to review and accept the annual development impact fee disclosure information for the Calaveras Blvd Widening Traffic Impact Fee, Transit Area Specific Plan Impact Fee and Storm Drain Fee for the Fiscal Year Ended June 30, 2022.

C12. Adopt a Resolution Authorizing the City Manager to Issue a Purchase Order in the Amount of \$297,573.91 for the Purchase of Five Police Vehicles from the National Auto Fleet Group through a Cooperative Procurement Contract with Sourcewell (Staff Contact: Jared Hernandez, Police Chief, 408-586-2406; and Chris Schroeder, Purchasing Agent, 408-586-3161)

Recommendation: Adopt a resolution authorizing the City Manager to issue a purchase order in the amount of \$297,573.91 for the purchase of five police vehicles from the National Auto Fleet Group through a Cooperative Procurement Contract with Sourcewell and find a CEQA exemption.

C13. Adopt a Resolution Authorizing the City Manager to Execute the Five-Year Sole Source Agreement with Hadronex, Inc. Doing Business as SmartCover Systems for Alert System

Services Related to the Deployment of SmartLevel Sewer Monitoring System Units for a Not-to-Exceed Amount of \$209,835.85, Subject to the Annual Appropriation of Funds (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602)

Recommendation: Adopt a resolution authorizing the City Manager to execute the five-year sole source agreement with Hadronex, Inc. doing business as SmartCovers Systems for alert system services related to the deployment of SmartLevel Sewer Monitoring System units for the not-to-exceed amount of \$209,835.85, subject to the annual appropriation of funds and approval as to form by the City Attorney, and find a CEQA exemption.

C14. Accept a State of California Parks and Recreation grant in the amount of \$224,543.00 for Sunnyhills Albert Augustine Jr. Memorial Park and Appropriate the Funds to CIP No. 3500 (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409)

Recommendation: Accept a State of California Parks grant in the amount of \$224,543.00 for Sunnyhills Albert Augustine Jr. Memorial Park and appropriate the funds to CIP No. 3500 and find all potential significant effects sufficiently analyzed by the December 14, 2021 Negative Declaration.

ANNOUNCEMENTS AND FUTURE AGENDA ITEMS (7:40 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. 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 whether to move the item forward. If a majority of the City Council agrees to move the item forward, the City Manager shall place the item on a future agenda.

ADJOURNMENT (7:45 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.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive Report of Municipal Election Results of November 8, 2022, and Adopt a Resolution to Certify Final Results of Candidate and Ballot Measure Election (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)
Category:	Leadership and Support Services
Meeting Date:	12/20/2022
	<u>Recommendation:</u> (1) Receive the report of election results and voter turnout; and (2) Adopt a resolution confirming the official canvass of election returns and declaring the results of the General Municipal Election held on November 8, 2022.

Background:

A general municipal election was held in the City of Milpitas on Tuesday, November 8, 2022 for the offices of Mayor and two members of the City Council, and one ballot measure. Per the County of Santa Clara's Registrar of Voters' Statement of Vote report dated December 8, 2022, voter turnout was 47.69 percent with 17,813 out of 37,353 total registered voters in the City of Milpitas casting their ballots on Election Day.

Final election results reveal that the candidates elected by the voters of Milpitas were Carmen Montano as Mayor, and Garry Barbadillo and Hon Lien as City Councilmembers. Ms. Montano was elected for the first time to a term of two years from a field of six candidates, with 34.45% of the votes cast. Ms. Lien was elected to a four-year term for the first time with 28.40% of the votes cast, and Mr. Barbadillo was elected to a four-year term with 20.07% of the votes cast, in a field of seven candidates.

Certified final results are included with the resolution presented for adoption at this meeting (in the agenda packet). The Santa Clara County Registrar of Voters certified the final election results on Thursday, December 8, 2022 exactly 30 days following the election, as required by California Elections Code.

Ballot Measure F, which was an ordinance to amend term limits on Mayoral and Councilmember service, was approved by Milpitas voters. The majority – over 78 percent – voted in favor of Ballot Measure F. Those who voted “Yes” for Ballot Measure F were 12,786 in total or 78.68 percent out of a total 16,251 votes cast.

The City Council is asked to confirm the Official Canvass of Returns of the November 8, 2022 Municipal Election by adopting a resolution. Certified election results submitted to the City Clerk by the Santa Clara County Registrar of Voters are attached to the resolution in the agenda packet.

Recommendation:

(1) Receive the report of election results and voter turnout; and
(2) Adopt a resolution confirming the official canvass of election returns and declaring the results of the General Municipal Election held on November 8, 2022.

Attachment:

1. Resolution
2. Exhibit A – Results of Mayor and Councilmember Election
3. Exhibit B – Results of Ballot Measure Election

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS RECITING THAT A GENERAL MUNICIPAL ELECTION WAS HELD ON NOVEMBER 8, 2022 CONFIRMING THE CANVASS OF RETURNS AND DECLARING THE RESULTS PURSUANT TO ELECTIONS CODE §§10262-10264

WHEREAS, a General Municipal Election was held and conducted in the City of Milpitas, California on Tuesday, November 8, 2022, as required by law, for the purpose of filling the Office of Mayor and two seats on the City Council, and for submitting one local ballot measure (Measure F) to Milpitas voters; and

WHEREAS, notice of the election was given in time, form and manner as provided by law, voting precincts were properly established, election officers were appointed and that in all respects the election was held and conducted and the votes were cast, received and canvassed and their return made and declared in time, form and manner as required by the provisions of the Elections Code of the State of California for the holding of elections in general law cities; and

WHEREAS, the Registrar of Voters of Santa Clara County has duly canvassed the votes cast and has certified to the City Council the results, which are attached as Exhibit "A."

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Milpitas as follows:

1. That the whole number of votes/ballots for Mayor and Councilmembers cast in the precincts except vote by mail voter ballots was 1,432 as set forth in the Registrar of Voters' Certificate of Election attached as Exhibit "A."

2. That the whole number of vote by mail voter ballots for Mayor and Councilmembers cast in the City was 16,374, making a total of 17,806 votes/ballots cast in the City, as set forth in the Registrar of Voters' Certificate of Election attached as Exhibit "A."

3. That the names of the persons voted for at the election for Mayor are as follows:

Karina R. Dominguez
Franco Perez
Anthony Phan
Carmen Montano
Voltaire Soriben Montemayor
Ola Robert Hassan

That the names of the persons voted for at the election for Member of the City Council are as follows:

Dipak Awasthi
Garry Barbadillo
Michael Tsai
Isaac Stringer
Demetress Morris
Hon Lien
Juliette Gomez

4. At the municipal election, the total number of votes cast in the City for each of the candidates including vote-by-mail, precinct and write-in votes was as follows:

Mayor

Carmen Montano	5,658
Anthony Phan	4,166
Karina R. Dominguez	4,108
Voltaire Soriben Montemayor	1,359
Ola Robert Hassan	637
Franco Perez	495

Members of the City Council

Hon Lien	7,840
Garry Barbadillo	5,540
Michael Tsai	4,472
Dipak Awasthi	4,001
Juliette Gomez	2,101
Demetress Morris	1,832
Isaac Stringer	1,521

5. Carmen Montano received the highest number of votes cast for the office of Mayor, thereby being elected to that office for a term of two years.

6. Hon Lien and Garry Barbadillo received the highest number of votes cast for the office of Member of City Council and these two persons are thereby elected to that office for a term of four years each.

7. That the whole number of votes/ballots for Measure F cast in the precincts except vote by mail voter ballots was 1,433 as set forth in the Registrar of Voters' Certificate of Election attached as Exhibit "B."

7. That the whole number of vote by mail voter ballots for Measure F cast in the City was 16,380, making a total of 17,813 votes/ballots cast in the City, as set forth in the Registrar of Voters' Certificate of Election attached as Exhibit "B."

8. That the measure voted upon at the election is as follows:

"Shall an ordinance be adopted amending the Milpitas Municipal Code to establish, effective with the November 8, 2022 General Municipal Election, a ten consecutive year limit on combined Mayoral and City Councilmember service, with a six year limit on Mayoral service, followed by a two-year "cooling off" period, during which a person may not serve as Mayor or a Councilmember?"	YES	
	NO	

9. Measure F (Term Limits) was voted upon by the registered voters of the City of Milpitas. The total number of votes cast for and against Measure F was:

Yes	12,786
No	3,465

and, therefore, as a result of the election, a majority of the voters voting on Measure F did vote in favor of it, and that the measure was carried, and shall be deemed adopted and ratified.

8. The City Clerk shall enter on the records of the City Council of the City, a statement of the results of the election, showing: (1) The whole number of voters/ballots cast in the City; (2) The names of the persons voted for; (3) The measure voted upon; (4) For what office each person was voted for; (5) The number of votes given at each precinct to each person, and for and against each measure; and (6) The total number of votes given to each person, and for and against each measure.

9. The City Clerk shall immediately make and deliver to each of the persons so elected a Certificate of Election signed by the City Clerk and authenticated; that the City Clerk shall also administer to each person elected the Oath of Office prescribed in the Constitution of the State of California and shall have them subscribe to it and file it in the office of the City Clerk. Each and all of the persons so elected shall then be inducted into the respective office to which they have been elected.

10. The City Clerk shall certify to the passage and adoption of this resolution.

PASSED AND ADOPTED this 20th day of December 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
Mayor and Councilmember Election
Certification of Results

CERTIFICATE OF ELECTION RESULTS

STATE OF CALIFORNIA)
) ss.
COUNTY OF SANTA CLARA)

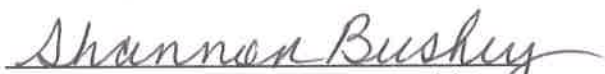
I, Shannon Bushey, Registrar of Voters of the County of Santa Clara, State of California, hereby declare:

1. A General Election was held in the County of Santa Clara, for the **City of Milpitas**, on November 8, 2022 for the purpose of electing **one (1) full-term Mayor, and two (2) full-term Council Members** to the Governing Board.

2. The official canvass of the returns of this election was conducted by the Office of the Registrar of Voters in accordance with the appropriate provisions of the Elections Code of the State of California.

3. The Statement of Votes Cast, now on file in my office and attached hereto, shows the number of votes for each candidate for the Governing Board of the **City of Milpitas** and in each of the precincts and that the total shown for each candidate are true and correct.

WITNESS my hand and Official Seal this 8th day of December 2022.


Shannon Bushey, Registrar of Voters



City of Los Altos Council Member (Vote for 2)

Precincts Reported: 11 of 11 (100.00%)

Candidate	Party	Total	
NEYSA FLIGOR		9,008	40.23%
PETE DAILEY		6,786	30.31%
ANITA ENANDER		6,482	28.95%
Total Votes		22,389	
		Total	
ROGER HEYDER	WRITE-IN	52	0.23%

Town of Los Gatos Council Member (Vote for 3)

Precincts Reported: 14 of 14 (100.00%)

Candidate	Party	Total	
ROB MOORE		7,294	23.09%
MARY BADAME		6,801	21.53%
ROB RENNIE		6,136	19.42%
ROB STUMP		5,753	18.21%
MARGARET SMITH		4,151	13.14%
REZA TAVANA		1,456	4.61%
Total Votes		31,591	

City of Milpitas Mayor (Vote for 1)

Precincts Reported: 15 of 15 (100.00%)

Candidate	Party	Total	
CARMEN MONTANO		5,658	34.45%
ANTHONY PHAN		4,166	25.37%
KARINA R. DOMINGUEZ		4,108	25.01%
VOLTAIRE SORIBEN MONTEMAYOR		1,359	8.27%
OLA ROBERT HASSAN		637	3.88%
FRANCO PEREZ		495	3.01%
Total Votes		16,423	

1 City of Milpitas Mayor

		Registered Voters	Voters Cast	Turnout (%)	KARINA R. DOMINGUEZ	FRANCO PEREZ	ANTHONY PHAN	CARMEN MONTANO	VOLTAIRE SORIBEN MONTEMAYOR	OLA ROBERT HASSAN
Electionwide	Precinct	37353	1432	3.83 %	325	58	271	412	161	78
Electionwide	Vote by Mail	37353	16374	43.84 %	3783	437	3895	5246	1198	559
Electionwide	Total	37353	17806	47.67 %	4108	495	4166	5658	1359	637
17th Congressional District	Precinct	37353	1432	3.83 %	325	58	271	412	161	78
17th Congressional District	Vote by Mail	37353	16374	43.84 %	3783	437	3895	5246	1198	559
17th Congressional District	Total	37353	17806	47.67 %	4108	495	4166	5658	1359	637
10th Senatorial District	Precinct	37353	1432	3.83 %	325	58	271	412	161	78
10th Senatorial District	Vote by Mail	37353	16374	43.84 %	3783	437	3895	5246	1198	559
10th Senatorial District	Total	37353	17806	47.67 %	4108	495	4166	5658	1359	637
24th Assembly District	Precinct	37353	1432	3.83 %	325	58	271	412	161	78
24th Assembly District	Vote by Mail	37353	16374	43.84 %	3783	437	3895	5246	1198	559
24th Assembly District	Total	37353	17806	47.67 %	4108	495	4166	5658	1359	637
State Board of Equalization #2	Precinct	37353	1432	3.83 %	325	58	271	412	161	78
State Board of Equalization #2	Vote by Mail	37353	16374	43.84 %	3783	437	3895	5246	1198	559
State Board of Equalization #2	Total	37353	17806	47.67 %	4108	495	4166	5658	1359	637
3rd Supervisorial District	Precinct	37353	1432	3.83 %	325	58	271	412	161	78
3rd Supervisorial District	Vote by Mail	37353	16374	43.84 %	3783	437	3895	5246	1198	559
3rd Supervisorial District	Total	37353	17806	47.67 %	4108	495	4166	5658	1359	637
City of Milpitas	Precinct	37353	1432	3.83 %	325	58	271	412	161	78
City of Milpitas	Vote by Mail	37353	16374	43.84 %	3783	437	3895	5246	1198	559
City of Milpitas	Total	37353	17806	47.67 %	4108	495	4166	5658	1359	637
Total - Precinct		37353	1432	3.83 %	325	58	271	412	161	78
Total - Vote by Mail		37353	16374	43.84 %	3783	437	3895	5246	1198	559
Contest Total		37353	17806	47.67 %	4108	495	4166	5658	1359	637

City of Milpitas Council Member (Vote for 2)

Precincts Reported: 15 of 15 (100.00%)

Candidate	Party	Total	
HON LIEN		7,840	28.40%
GARRY BARBADILLO		5,540	20.07%
MICHAEL TSAI		4,772	17.29%
DIPAK AWASTHI		4,001	14.49%
JULIETTE GOMEZ		2,101	7.61%
DEMETRESS MORRIS		1,832	6.64%
ISAAC STRINGER		1,521	5.51%
Total Votes		27,607	

City of Morgan Hill Mayor (Vote for 1)

Precincts Reported: 20 of 20 (100.00%)

Candidate	Party	Total	
MARK TURNER		6,672	42.78%
RICH CONSTANTINE		5,132	32.91%
LARRY CARR		3,792	24.31%
Total Votes		15,596	

City of Morgan Hill, District B Council Member (Vote for 1)

Precincts Reported: 7 of 7 (100.00%)

Candidate	Party	Total	
YVONNE MARTÍNEZ BELTRÁN		2,222	60.48%
BRYAN SUTHERLAND		1,452	39.52%
Total Votes		3,674	

City of Morgan Hill, District D Council Member (Vote for 1)

Precincts Reported: 4 of 4 (100.00%)

Candidate	Party	Total	
MARILYN LIBRERS		2,411	56.45%
JOHN K. MCKAY		1,860	43.55%
Total Votes		4,271	

1 City of Milpitas Council Member

		Registered Voters	Voters Cast	Turnout (%)	DIPAK AMASTHI	GARY BARBADILLO	MICHAEL TSAI	ISAAC STRINGER	DEMETRES S MORIS	HON LIEN	JULIETTE GOMEZ
Electionwide	Precinct	37353	1432	3.83 %	408	486	306	172	175	483	184
Electionwide	Vote by Mail	37353	16374	43.84 %	3593	5054	4466	1349	1657	7357	1917
Electionwide	Total	37353	17806	47.67 %	4001	5540	4772	1521	1832	7840	2101
17th Congressional District	Precinct	37353	1432	3.83 %	408	486	306	172	175	483	184
17th Congressional District	Vote by Mail	37353	16374	43.84 %	3593	5054	4466	1349	1657	7357	1917
17th Congressional District	Total	37353	17806	47.67 %	4001	5540	4772	1521	1832	7840	2101
10th Senatorial District	Precinct	37353	1432	3.83 %	408	486	306	172	175	483	184
10th Senatorial District	Vote by Mail	37353	16374	43.84 %	3593	5054	4466	1349	1657	7357	1917
10th Senatorial District	Total	37353	17806	47.67 %	4001	5540	4772	1521	1832	7840	2101
24th Assembly District	Precinct	37353	1432	3.83 %	408	486	306	172	175	483	184
24th Assembly District	Vote by Mail	37353	16374	43.84 %	3593	5054	4466	1349	1657	7357	1917
24th Assembly District	Total	37353	17806	47.67 %	4001	5540	4772	1521	1832	7840	2101
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State Board of Equalization #2	Vote by Mail	37353	16374	43.84 %	3593	5054	4466	1349	1657	7357	1917
State Board of Equalization #2	Total	37353	17806	47.67 %	4001	5540	4772	1521	1832	7840	2101
3rd Supervisorial District	Precinct	37353	1432	3.83 %	408	486	306	172	175	483	184
3rd Supervisorial District	Vote by Mail	37353	16374	43.84 %	3593	5054	4466	1349	1657	7357	1917
3rd Supervisorial District	Total	37353	17806	47.67 %	4001	5540	4772	1521	1832	7840	2101
City of Milpitas	Precinct	37353	1432	3.83 %	408	486	306	172	175	483	184
City of Milpitas	Vote by Mail	37353	16374	43.84 %	3593	5054	4466	1349	1657	7357	1917
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Total - Vote by Mail		37353	16374	43.84 %	3593	5054	4466	1349	1657	7357	1917
Contest Total		37353	17806	47.67 %	4001	5540	4772	1521	1832	7840	2101

EXHIBIT B
Measure F Election
Certification of Results

CERTIFICATE OF ELECTION RESULTS

STATE OF CALIFORNIA)
) ss.
 COUNTY OF SANTA CLARA)

I, Shannon Bushey, Registrar of Voters of the County of Santa Clara, State of California, hereby declare:

1. A General Election was held in the County of Santa Clara, in the **City of Milpitas**, on November 8, 2022 for the purpose of submitting the following measure to the voters:

F

Shall an ordinance be adopted amending the Milpitas Municipal Code to shorten Councilmember terms limits by establishing for both Councilmembers and Mayor, effective with the November 8, 2022 General Municipal Election, a ten consecutive year limit on combined Mayoral and City Councilmember service, with a six year limit on Mayoral service, followed by a two-year "cooling off" period, during which a person may not serve as Mayor or a Councilmember?

2. The official canvass of the returns of the election was conducted by the Office of the Registrar of Voters in accordance with the appropriate provisions of the Elections Code of the State of California.

3. The Statement of Votes Cast, now on file at my office, shows the whole number of votes cast for **Measure F** in each of the precincts and the total shown is true and correct.

WITNESS my hand and Official Seal this 8th day of December, 2022.



Shannon Bushey
 Shannon Bushey, Registrar of Voters

Measure C - City of Saratoga, Term Limit Ordinance (Vote for 1)

Precincts Reported: 17 of 17 (100.00%)

Candidate	Party	Total	
Yes		10,357	76.72%
No		3,142	23.28%
Total Votes		13,499	

Measure D - City of Gilroy, Charter Amendment (Vote for 1)

Precincts Reported: 15 of 15 (100.00%)

Candidate	Party	Total	
Yes		9,885	72.00%
No		3,845	28.00%
Total Votes		13,730	

Measure E - Patterson Joint Unified School District, School Bonds (Vote for 1)

Precincts Reported: 2 of 2 (100.00%)

Candidate	Party	Total	
Bonds - No		22	62.86%
Bonds - Yes		13	37.14%
Total Votes		35	

Measure F - City of Milpitas, Term Limit Ordinance (Vote for 1)

Precincts Reported: 15 of 15 (100.00%)

Candidate	Party	Total	
Yes		12,786	78.68%
No		3,465	21.32%
Total Votes		16,251	

Measure G - City of Santa Clara, No Tax Increase/Services Protection (Vote for 1)

Precincts Reported: 36 of 36 (100.00%)

Candidate	Party	Total	
Yes		24,643	84.19%
No		4,629	15.81%
Total Votes		29,272	

1 Measure F - City of Milpitas, Term Limit Ordinance						
		Registered Voters	Voters Cast	Turnout (%)	Yes	No
Electionwide	Precinct	37353	1433	3.84 %	1001	315
Electionwide	Vote by Mail	37353	16380	43.85 %	11785	3150
Electionwide	Total	37353	17813	47.69 %	12786	3465
17th Congressional District	Precinct	37353	1433	3.84 %	1001	315
17th Congressional District	Vote by Mail	37353	16380	43.85 %	11785	3150
17th Congressional District	Total	37353	17813	47.69 %	12786	3465
10th Senatorial District	Precinct	37353	1433	3.84 %	1001	315
10th Senatorial District	Vote by Mail	37353	16380	43.85 %	11785	3150
10th Senatorial District	Total	37353	17813	47.69 %	12786	3465
24th Assembly District	Precinct	37353	1433	3.84 %	1001	315
24th Assembly District	Vote by Mail	37353	16380	43.85 %	11785	3150
24th Assembly District	Total	37353	17813	47.69 %	12786	3465
State Board of Equalization #2	Precinct	37353	1433	3.84 %	1001	315
State Board of Equalization #2	Vote by Mail	37353	16380	43.85 %	11785	3150
State Board of Equalization #2	Total	37353	17813	47.69 %	12786	3465
3rd Supervisorial District	Precinct	37353	1433	3.84 %	1001	315
3rd Supervisorial District	Vote by Mail	37353	16380	43.85 %	11785	3150
3rd Supervisorial District	Total	37353	17813	47.69 %	12786	3465
City of Milpitas	Precinct	37353	1433	3.84 %	1001	315
City of Milpitas	Vote by Mail	37353	16380	43.85 %	11785	3150
City of Milpitas	Total	37353	17813	47.69 %	12786	3465
Total - Precinct		37353	1433	3.84 %	1001	315
Total - Vote by Mail		37353	16380	43.85 %	11785	3150
Contest Total		37353	17813	47.69 %	12786	3465

November 2022						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

Milpitas City Council Calendar

December 2022

January 2023						
S	M	T	W	Th	F	S
	1	2	3	4	Item # 5.	
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

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) 7:00 PM-CEDAW Task Force, Room 7/8 Community Center (KD)	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 6:00 PM-City Council Special Meeting – Swearing In Ceremony 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  Happy Holidays City Hall and City Facilities Closed (Fire and Police are not affected)				31

December 2022						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

Milpitas City Council Calendar

January 2023

February 2023						
S	M	T	W	Th	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28				

Item # 5.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1 	2 CITY OBSERVED HOLIDAY CITY OFFICES CLOSED	3	4 7:00 PM -Community Advisory Commission (EC)	5 5:30 PM -Milpitas Chamber of Commerce Board (EC)	6	7
8	9 4:30 PM -Economic Development and Trade Commission (KD) 7:00 PM -Parks, Recreation & Cultural Resources Commission (CM)	10 4:00 PM -HOPE Suicide Prevention Task Force 5:30 PM -Special City Council	11 Tent: 2:00 PM -Santa Clara VTA Monthly Briefing - Northeast Group (CM) (Santa Clara) 7:00 PM -Planning Commission 7:00 PM -Silicon Valley Clean Energy Board of Directors (Cupertino)	12 4:00 PM -Santa Clara VTA Policy Advisory Committee 4:00 PM -Treatment Plant Advisory Committee (San Jose) 5:30 PM -Santa Clara VTA Board of Directors 7:00 PM -Cities Assoc of SCC 7:00 PM -Youth Advisory Commission	13 *4:30 PM -City Council Finance Subcommittee	14  6:00 PM -Lunar New Year Celebration
15	16  MARTIN LUTHER KING JR. BIRTHDAY CITY OFFICES CLOSED	17 6:00 PM -Closed Session 7:00 PM -City Council	18 6:00 PM -Energy and Environmental Sustainability Commission	19 4:00 PM -VTA Policy Advisory Committee 6:30 PM -Bay Area Water Supply Conserv Agency (Burlingame Comm. Center – Sequoia Room) 7:00 PM -Public Safety and Emergency Preparedness Commission	20	21
22	23 7:00 PM -Arts Commission 7:00 PM -Library and Education Commission (EC) (Milpitas Public Library)	24	25 7:00 PM -Planning Commission	26 9:00 AM -City Council Retreat (location tbd) 4:00 PM -Silicon Valley Regional Interoperability Authority (SVRIA)	27	28
29	30	31 5:30 PM -City Council FY2023-24 Budget Study Session (Senior Center)				

*Finance Subcommittee will only meet as needed



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

MINUTES

TUESDAY, DECEMBER 6, 2022

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

The City Council of the City of Milpitas convened on the regular City Council meeting day in a Joint Meeting of the Milpitas City Council, Housing Authority, and Successor Agency on December 6, 2022, in the City Council Chamber at City Hall, 455 E. Calaveras Blvd., Milpitas, and via teleconference/Zoom webinar.

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

Mayor Tran called the Regular City Council meeting to order at 7:22 PM. Roll Call was taken by City Clerk Guzzetta.

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

ABSENT: None

PLEDGE OF ALLEGIANCE

Mayor Tran invited Voltaire Montemayor to lead the Pledge of Allegiance.

INVOCATION

There was no invocation.

PUBLIC FORUM

The following people spoke under Public Forum:

1. Voltaire Montemayor
2. Renuka Marichannappa
3. Jackie Romero

Mayor Tran called a recess at 7:31 PM and the City Council reconvened at 7:50 PM

ANNOUNCEMENTS AND FUTURE AGENDA ITEMS

Mayor Tran offered thanks to City staff that contributed to the Annual Christmas Tree lighting ceremony.

Councilmember Chua made the following requests:

1. Requested staff look into the impact of and how the City can compensate for the massive number of layoffs in the Bay Area. Requested staff consider how the City can help residents affected by layoffs, reach out to those affected and show them our programs.
2. Dedicate the council meeting to Parks, Recreation, and Cultural Resources Commissioner Voltaire Montemayor in recognition of his December 10th birthday.

Mayor Tran requested Councilmember Chua's first item be directed to the Economic Development and Trade Commission before being sent to City Council. Councilmember Chua accepted.

Councilmember Chua asked to have a review of the current lottery process for low income housing and to look into how it can be improved.

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 December 6, 2022 Regular Meeting Agenda, postponing Item 18 to January 10, 2023

Motion/Second: Mayor Tran / Councilmember Chua

Motion carried by the following:

AYES: Councilmembers Chua, Dominguez, Phan, Mayor Tran

NOES: None

ABSENT: Vice Mayor Montano

CONSENT CALENDAR

Motion: to approve the consent calendar.

Motion/Second: Mayor Tran / Councilmember Chua

Motion carried by the following:

AYES: Councilmembers Chua, Dominguez, Phan, Mayor Tran

NOES: None

ABSENT: Vice Mayor Montano

C1. Receive City Council Calendar of Meetings for December 2022 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Received City Council Calendar of Meetings for December 2022.

C2. Approve City Council Regular Meeting Minutes of November 15, 2022 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Approved City Council Regular Meeting minutes of November 15, 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 provide direction to staff as necessary.

C5. Consider the Recommendation from Mayor Tran for Appointments to City Commissions and Declare an Unscheduled Vacancy (Contact: Mayor Tran, 408-586-3029)

Received the recommendation from Mayor Tran and approved the following appointments to City Commissions; and declared an unscheduled vacancy on the Economic Development and Trade Commission and directed the City Clerk to post the notice of unscheduled vacancy. Appointments were as follows:

Arts Commission:

1. Appoint Helen Qiu as Alternate No. 2 with a term ending October 2025.

Community Advisory Commission:

1. Promote Monica Rodriguez to a full voting seat with an unexpired term ending January 2024.
2. Promote Kavita Sreedhar to Alternate No. 1 with an unexpired term ending January 2024.
3. Appoint Jose Geronimo as Alternate No. 2 with a term ending January 2026.

Energy and Environmental Sustainability Commission:

1. Reappoint Jeff Hogg to a term ending October 2025.
2. Reappoint Charles Lingle to a term ending October 2025.
3. Promote Felix Mbuga to a full voting seat with a term ending October 2025.
4. Promote Carmelo Coronel to Alternate No. 1 with a term ending October 2025.
5. Appoint Frank Bush as Alternate No. 2 with an unexpired term ending October 2024.

Library and Education Advisory Commission:

1. Promote Ann Anderson to a full voting seat with an unexpired term ending June 2023.
2. Appoint Trijohn Minh Tran as Alternate No. 2 with an unexpired term ending June 2024.

Parks, Recreation, and Cultural Resources Commission:

1. Appoint Yesenia Illescas to a term ending June 2025.

Planning Commission:

1. Reappoint Mercedes Albana to a term ending December 2025.
2. Reappoint Sonia Medina-Ashby to a term ending December 2025.

Senior Advisory Commission:

1. Reappoint Jenny Berryhill to a term ending December 2025.
2. Reappoint Willy Wong to a term ending December 2025.
3. Promote Nona Tolentino to a full voting seat with a term ending December 2025.
4. Promote Barbara Jo Navarro to Alternate No. 1 with an unexpired term ending December 2023.
5. Appoint Ha Phan as Alternate No. 2 with an unexpired term ending December 2024.

C6. 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.

C7. Authorize City Manager's Response Letter to the October 7, 2022 Santa Clara County Civil Grand Jury Final Report "If You Only Read the Ballot, You're Being Duped" (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053; and Michael Mutalipassi, City Attorney 408-586-3040)

Authorized the City Manager to send a letter in response to the October 7, 2022 Santa Clara County Civil Grand Jury Final Report "If You Only Read the Ballot, You're Being Duped" pursuant to Penal Code section 933.

- C8. Receive an Update on the American Rescue Plan Act and Provide Direction to Staff (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053; and Lauren Lai, Director of Finance, 408-586-3111)**

Received an update on the American Rescue Plan Act (ARPA) programs and provide direction to staff.

- C9. Accept the City's Annual Comprehensive Financial Report and Other Related Annual Audited Reports for the Fiscal Year Ended June 30, 2022 (Staff Contact: Lauren Lai, Finance Director, 408-586-3111)**

Accepted the City's Annual Comprehensive Financial Report (ACFR) and other related annual audited reports for the Fiscal Year ended June 30, 2022 and find a CEQA exemption.

- C10. 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 (Staff Contact: Steve Erickson, Engineering Director / City Engineer, 408-586-3301; and Roberto Alonzo, Principal Civil Engineer, 408-586-3316)**

Authorized 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 and find a CEQA exemption.

- C11. Adopt a Resolution Authorizing the City Manager to Execute the Purchase of Two 2023 Ford Super Duty F-250 SRW (W2B) XLT 4WD Crew Cabs for the Fire Department from Through a Sourcewell Cooperative Contract with National Auto Fleet Group in the Amount of \$154,270.06 (Staff Contact: Brian Stelling, Interim Fire Chief, 408-586-2827)**

Adopted **Resolution No. 9202** authorizing the City Manager to execute the purchase of two 2023 Ford Super Duty F-250 SRW (W2B) XLT 4WD Crew Cabs for the Fire Department through a Sourcewell Cooperative Contract with National Auto Fleet Group in the amount of \$154,270.06 and find a CEQA exemption.

- C12. Housing Authority/Successor Agency: Sale of the residential unit located at 600 S. Abel Street Unit #208 (Staff Contact: Alex Andrade, Economic Development Director, 408-586-3046 and Michelle Silva, Administrative Analyst II, 408-586-3244)**

Adopted **Resolution No. 9203 / HA32 / SA15** authorizing the Executive Director of the Milpitas Housing Authority to execute documents for the sale of the residential property located at 600 S. Abel Street Unit #208 in the amount of \$314,973.00; and approved related budget amendments due to the sale of the property located at 600 S. Abel Street Unit #208 in the amount of \$314,973.00.

- C13. Adopt a Resolution Appointing Roger Lee as Interim Public Works Director (Liz Brown, Interim Human Resources Director, 408-586-3086)**

Adopted **Resolution No. 9204** 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.

- C14. Waive the Second Reading and Adopt Ordinance No. 38.849 Amending the Zoning Map of the City of Milpitas in Accordance with the Provisions of Section 3.03 of Chapter 10 of Title XI 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 1,200 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)

Waived the second reading and adopted **Ordinance 38.849** 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.

C15. Waive the Second Reading and Adopt Ordinance No. 38.850 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)

Waived the second reading and adopted **Ordinance No. 38.850**, amending Section 13 “Special Uses” of Chapter 10 “Zoning” of Title XI of the Milpitas Municipal Code and adding a new Subsection 13.19 Relating to Outdoor Dining and find a CEQA exemption under sections 15183 and 15061(b)(3).

C16. Report on Bids and Award Construction Contract to G&G Builders Inc. in the Amount of \$872,029.00 for Rehabilitation of Up to Eleven City Parks Project (Staff Contact: Roger Lee, Interim Public Works Director, 408-586-2602)

Received report on bids and award a construction contract to the lowest responsible and responsive bidder, G&G Builders Inc., in the amount of \$872,059.00 for the Rehabilitation of Up to Eleven City Parks project; and authorized the City Manager to negotiate and execute contract change order(s) in an aggregate amount not to exceed \$468,514.00 subject to appropriation of funds and find a CEQA exemption as modifications to existing facilities.

PUBLIC HEARINGS

17. Conduct a Public Hearing and Adopt Ordinance No. 65.152 for Adoption by Reference the 2022 California Building Codes and Amendments (Staff Contact: Bill Tott, Building Official, 408-586-3263)

Building Official Tott presented the report.

Mayor Tran opened the public hearing

There were the following speakers:

1. Voltaire Montemayor
2. Jared Johnson
3. Bruce Naegel
4. Alex Wagonfeld
5. Linda Hutchins-Knowles

Mayor Tran closed the public hearing.

City Attorney Mutalipassi read the title of the ordinance.

After discussion, motion: to waive the second reading and adopt **Ordinance No. 65.152** amending Chapters 3, 3.5, 4, 5, 6, 7, 10, 14, 150, and 170 of Title II of the Milpitas Municipal Code adopting by reference the 2022 California Building Code, 2022 California Residential Code, 2021 International Property Maintenance Code, 2022 California Mechanical Code, 2022 California Electrical Code, 2022

California Plumbing Code, 2021 International Swimming Pool and Spa Code, 2022 California Existing Building Code, and 2022 California Historical Building Code, with amendments

Motion/Second: Mayor Tran / Councilmember Chua

Motion carried by the following:

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

NOES: None

- 18. Conduct a Public Hearing and Adopt Ordinance No. 65.153 Adopting by Reference the 2022 California Energy Code; and Adopt Ordinance No. 65.154 Adopting by Reference the 2022 California Green Building Standards Code with Amendments (Staff Contact: Bill Tott, Building Official, 408-586-3263)**

Postponed to the first regular meeting in January 2023.

- 19. Conduct a Public Hearing, Waive the Second Reading and Adopt Ordinance No. 133.26, Adopting by Reference with Certain Local Amendments the 2022 Edition of the California Fire Code (Staff Contact: Arthur Belton, Deputy Fire Chief/Fire Marshal, 408-586-3384)**

Deputy Fire Chief / Fire Marshal Belton presented the report.

Mayor Tran opened the public hearing

There were the following speakers:

1. Voltaire Montemayor

Mayor Tran closed the public hearing.

City Attorney Mutalipassi read the title of the ordinance.

After discussion, motion: to waive the second reading and adopt **Ordinance No. 113.26** adopting by reference with certain local amendments the 2022 edition of the California Fire Code, enacted as Chapter 300, Title V of the Milpitas Municipal Code.

Motion/Second: Mayor Tran / Councilmember Chua

Motion carried by the following:

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

NOES: None

Items 20 & 21 were heard jointly.

- 20. Conduct a Public Hearing and Consider Adopting an Urgency Ordinance Amending Section 13 “Special Uses” of Chapter 10 “Zoning” of Title XI of the Milpitas Municipal Code Relating to Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) (Staff Contact: Ned Thomas, Planning Director, 408-586-3273)**

Planning Director Thomas presented the report. Senior Planner Fossati and Consultant Holly Pearson were available to respond to questions from the Council.

Mayor Tran opened the public hearing

There were the following speakers:

1. Voltaire Montemayor

Mayor Tran closed the public hearing.

Vice Mayor Montano asked for clarification on heights within a half mile of the transportation area and voiced concerns with the new State-mandated height allowances.

After discussion, motion: to adopt **Urgency Ordinance No. 38.851** amending Section 13 “Special Uses” of Chapter 10 “Zoning” of Title XI of the Milpitas Municipal Code to comply with Government Code Section(s) 65852.2, 65852.22, 65852.23 and Section 17980.12 of the Health and Safety Code and making findings that the proposed zoning ordinance amendment is statutorily exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to Public Resources Code section 21080.17, which exempts from CEQA any ordinance that is adopted to implement Government Code Section 65852.1 or 65852.2.

Motion/Second: Mayor Tran / Councilmember Chua

Motion carried by the following:

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

NOES: None

21. 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 Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) (Staff Contact: Ned Thomas, Planning Director, 408-586-3273)

City Attorney Mutalipassi read the title of the ordinance.

After discussion, motion: to waive the first reading beyond the title and introduce **Ordinance No. 38.852** amending Section 13 “Special Uses” of Chapter 10 “Zoning” of Title XI of the Milpitas Municipal Code relating to Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) and making findings of CEQA exemption.

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

22. Receive Staff Report on Draft Water 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 Water Rates (Staff Contact: Roger Lee, Interim Public Works Director, 408-586-2602; and Lauren Lai, Finance Director, 408-586-3111)

Interim Public Works Director Lee presented the report.

Mayor Tran asked staff to engage more with business customers and ensure the City hears from small businesses and shopping centers.

Councilmember Dominguez voiced opposition to exploring rate increases and asked to simplify the process potentially through an online form that residents could submit their information and staff certification verify the address. She asked to ensure outreach is offered in the languages spoken by Milpitas residents.

There were the following speakers:

1. Voltaire Montemayor

Mayor Tran confirmed staff's recommendation to conduct the public hearing on March 7, 2023.

23. Receive Staff Report on Draft 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 (Staff Contact: Roger Lee, Interim Public Works Director, 408-586-2602; and Lauren Lai, Director of Finance, 408-586-3111)

Received staff report on Draft Sewer Rates Study directed 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 not less than 45 days prior to the hearing and find a CEQA exemption.

Interim Public Works Director Lee presented the report.

Mayor Tran noted that there needs to be a larger discussion regarding subsidizing mobile home parks and the importance of community engagement.

There were the following speakers:

1. Voltaire Montemayor

Councilmember Dominguez mentioned the importance of making sure there is opportunity for the community to have access in different languages, and to include information on the protest process on the website and in the newsletter.

Mayor Tran confirmed staff's recommendation to conduct the public hearing on March 7, 2023

LEADERSHIP AND SUPPORT SERVICES

24. Adopt a Resolution Appointing Brian Stelling as Interim Fire Chief (Staff Contact: Liz Brown, Interim Human Resources Director, 408-586-3086)

Interim Human Resources Director Brown presented the report.

There were the following speakers:

1. Voltaire Montemayor

After discussion, motion: to adopt **Resolution No. 9205** appointing Brian Stelling as Interim Fire Chief in accordance with California Government Code Sections 7522.56 and 21221(h) and authorize the City Manager to execute an employment agreement with Brian Stelling.

Motion/Second: Tran / Chua

Motion carried by the following:

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

NOES: None

ADJOURNMENT

Mayor Tran adjourned the meeting at: 9:34 PM in honor of the birthday of Parks, Recreation and Cultural Resources Commissioner Voltaire Montemayor.

Draft meeting minutes submitted by City Clerk, Suzanne Guzzetta

TENTATIVE CITY COUNCIL AGENDA ITEM LIST

Item # 7.

as of 12/13/2022

January 10, 2023 – Special Meeting

CLOSED SESSION

INVOCATION (TBD)

PRESENTATION

CONSENT CALENDAR

1. Receive City Council calendar for January 2023 (City Clerk)
2. Approve City Council Meeting minutes of December 20, 2022 (City Clerk)
3. Preview list of items for January 17, 2023 (City Clerk)
4. Councilmember Request List (City Clerk)

PUBLIC HEARING

COMMUNITY DEVELOPMENT

COMMUNITY SERVICES

PUBLIC SAFETY

LEADERSHIP

5. Approve the Prioritization of Additional Workplan Items City Council Policy (City Manager)

REPORTS

6. Council Appointments to Various Internal/External Commissions & Committees (Mayor)

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

Item # 8.

OPEN ITEMS				
Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
1	Look into the impact of and how the City can compensate for the massive number of layoffs in the Bay Area. Staff consider how the City can help residents affected by layoffs, reach out to those affected and show them city programs.	Chua	12/6/2022	Referred to Economic Development and Trade Commission
2	Food pantry	Tran	11/15/2022	
3	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
4	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
5	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.
6	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
7	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
8	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
9	Schedule an additional ADU workshop	Chua	9/6/2022	Staff is evaluating this request
10	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
11	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
12	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
13	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

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

Item # 8.

Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
14	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
15	Quarterly or Monthly crime statistics on Homekey Project	Chua	6/7/2022	PD will present quarterly reports starting on November 15, 2022.
16	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.
17	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.
18	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:
19	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
20	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
21	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; Item will be brought forward for funding for Council consideration as part of the FY 2023-24 budget process.
22	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
23	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

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

Item # 8.

Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
24	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
25	Evaluate reopening the childcare center with a non-profit organization running the center	Montano	2/1/2022	Approved during Spring Quarterly City Council Workplan Items Prioritization Discussion on 5/03/2022.
26	Requested an appropriation in an amount not to exceed \$250,000 to procure a contract to address the streetlights that are pending fieldwork.	Tran	2/1/2022	At this time, staff has sufficient Council approved resources to address the remaining streetlight outages; however, will bring relevant actions for Council consideration, if needed.
27	Explore a lease for the vacant land adjacent to the Library for City use	Tran	1/18/2022	Discussed at Spring Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward at the 5/03/2022 meeting;
28	Staff to look into mural Art on Great Mall Parkway on the VTA owned Light rail pillars	Montano	11/16/2021	Discussed at Spring Quarterly City Council Workplan Items Prioritization Discussion; Approved at the 5/03/2022 meeting; discussed funding at the 5/10/2022 budget meeting and approved \$100,000 of funding for one site
29	Request for the City to make the temporary third-party food deliver fee caps permanent and add additional provisions for enforcement	Phan	11/16/2021	Discussed at Spring Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward at the 5/03/2022 meeting
30	Have a picture of Albert Vogel Sr. put up in the Senior Center	Montano	10/19/2021	Approved to move forward at the 1/11/2022 Council meeting; Staff engaged the artist of the existing mural regarding this Council approved item.
31	Requested the City extend the outdoor dining options through March of next year	Phan	9/21/2021	Planning Director to provide information on current outdoor dining extension
32	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.
33	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. Per the Information Memorandum issued on Nov. 22, 2022, due to the success of the Saturday Day hours, the pilot will be extended for the remainder of the current Fiscal Year.
34	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
35	Staff to create a plan on how to increase the number of local businesses doing business with the City	Chua	4/6/2021	At 8/9/2021 Council meeting, Council voted that this item may have to come back for additional discussion because there may be some legal considerations.

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

Item # 8.

Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
36	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.
37	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.
38	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
39	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.
40	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:	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:	12/20/2022
	<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:

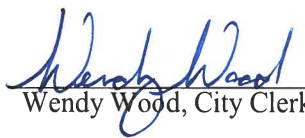
AYES: (5) Mayor Tran, Vice Mayor Montano, Councilmembers Chua, Dominguez, and Phan

NOES: (0) None

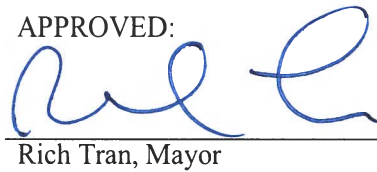
ABSENT: (0) None

ABSTAIN: (0) None

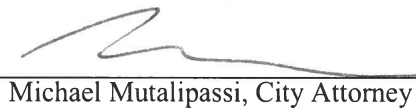
ATTEST:


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 an Encroachment and Maintenance Agreement with Milpitas – District 4 Owner, LLC, for the Perpetual Maintenance and Operation of Private Sidewalk Lighting Improvements within the City Right-of-Way Located at 150 Market Street (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:	12/20/2022
	<u>Recommendation:</u> Approve and authorize the City Manager to execute an Encroachment and Maintenance Agreement with Milpitas – District 4 Owner, LLC, for the perpetual maintenance and operation of private sidewalk lighting improvements within the city right-of-way located at 150 Market Street.

BACKGROUND:

On March 20, 2012, the City Council approved a Major Tentative Map (MT11-0002), and on November 17, 2015, approved an amendment to Site Development Permit (SD11-0001) and Conditional Use Permit (UP11-0037) to allow the construction of 4 mixed use buildings with 953 residential units and 98,684 square feet of commercial space on 13.33 acres (District 1), and 200 residential condominium units on 9.68 acres (District 2) located at 1315 – 1600 McCandless Drive. The project includes ancillary lots for private streets and public streets, will be constructed in phases, and have multiple final maps. The current project phase, District 1 Lot 4, consists of 213 residential units and 3,480 square feet of commercial space on 2.29 acres located at 150 Market Street (District 1, Lot 4).

ANALYSIS:

The Developer of the current project phase, Milpitas – District 4 Owner, LLC, has requested to enter into a City Encroachment and Maintenance Agreement (**Attached**) for the perpetual operation and maintenance of private pedestrian lighting improvements located in City right-of-way at 150 Market Street. These improvements include light fixtures, service boxes, wires, conduits, and signage and will be privately owned and operated and not maintained by the city. The purpose of the improvements is to provide a higher standard lighting improvement fronting the development. The Engineering Director/City Engineer has reviewed the improvement plans which include the private lighting and recommends the City Council approve the Encroachment and Maintenance Agreement for these private improvements.

POLICY ALTERNATIVE(S):

Alternative 1:

Deny approval of Encroachment and Maintenance Agreement for the installation of the Improvements.

Pros: None

Cons: Denying approval of the Encroachment and Maintenance Agreement will require the developer to remove the private lighting improvements already installed.

Reason for Not Recommending: The proposed lighting improvements are designed to support the public safety and provide a higher level of architectural expression at the front of the development. Staff recommends the City Council approve the Encroachment and Maintenance Agreement for the owner's operation and maintenance of this private lighting improvement.

FISCAL IMPACT:

The private lighting improvements will not be maintained by the city and will be perpetually owned and maintained by the property owner. The Developer will pay the city the standard \$3,000 fee for implementation of the Encroachment and Maintenance Agreement.

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. Staff determined that an Addendum to the Transit Area Specific Plan (SCH# 2006032091) pursuant to Section 15164 of the CEQA Guidelines was the appropriate CEQA document given the changes to the General Plan, Specific Plan and Zoning Code. The Addendum demonstrated that there were no substantial changes in the environment because the project would reduce the overall development intensity. 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 an Encroachment and Maintenance Agreement with Milpitas – District 4 Owner, LLC, for the Perpetual Maintenance and Operation of Private Sidewalk Lighting Improvements within the City Right-of-Way Located at 150 Market Street.

Attachment(s):

Encroachment and Maintenance Agreement

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

**CITY OF MILPITAS
455 E. CALAVERAS BOULEVARD
MILPITAS, CA 95035-5479
Attn: City Clerk**

Exempt from Recording Fee per
Government Code § 6103

(Space above for Recorder's Use)

ENCROACHMENT AND MAINTENANCE AGREEMENT

THIS ENCROACHMENT AND MAINTENANCE AGREEMENT ("AGREEMENT") is issued by the CITY OF MILPITAS, a California municipal corporation and general law city ("CITY"), to MILPITAS-DISTRICT 4 OWNER, LLC ("PERMITTEE"). CITY and PERMITTEE are sometimes hereinafter referred to individually as "Party" and collectively as the "Parties."

RECITALS

A. PERMITTEE has applied for an encroachment and maintenance agreement from CITY in connection with PERMITTEE's project located on certain real property in the County of Santa Clara, State of California, commonly referred to as District 1 – Lot 4, located at 150 Market Street, Milpitas, California, and legally described in Exhibit A, attached hereto and incorporated herein by this reference ("REAL PROPERTY").

B. CITY owns an easement or fee simple right of way ("RIGHT OF WAY") over, across, under, within and along a certain portion of the REAL PROPERTY legally described in Exhibit B, attached hereto and incorporated herein by this reference ("RIGHT OF WAY AREA").

C. PERMITTEE has requested CITY to enter into this encroachment and maintenance agreement, whereby PERMITTEE would be authorized to install and maintain certain improvements on, over, and across certain portions of the RIGHT OF WAY AREA.

D. CITY agrees to provide to PERMITTEE the right to encroach upon the RIGHT OF WAY for the installation and maintenance of certain improvements on, over and across certain portions of the RIGHT OF WAY AREA, subject to the terms and conditions contained herein.

**CITY HEREBY ISSUES AN ENCROACHMENT PERMIT PURSUANT TO THE
TERMS OF THIS ENCROACHMENT AGREEMENT TO PERMITTEE AS FOLLOWS:**

1. Encroachment Permission. CITY hereby provides to PERMITTEE permission to encroach upon the RIGHT OF WAY PROPERTY, for the purpose of installing and maintaining the IMPROVEMENTS (defined below), subject to the limitations set forth herein and PERMITTEE's fulfillment and ongoing compliance with the terms and conditions set forth herein.

The installation and maintenance of, and any use of, the IMPROVEMENTS (defined below) shall be subordinate to any use and operations which CITY may conduct during the effective period of this AGREEMENT, and PERMITTEE shall not cause any unreasonable delay or interference with CITY'S access to the RIGHT OF WAY AREA. PERMITTEE shall not interfere with the operations of CITY in the RIGHT OF WAY AREA, whether or not such interference is considered material.

2. Authorized Improvements. The improvements authorized to be installed pursuant to this AGREEMENT are the installation three privately owned pedestrian streetlights and accompanying service boxes, wires, conduits and posted signage with lighting ownership contact information for maintenance and repair. Record drawings of installed lighting shall be provided to the City's Engineering Department; ("IMPROVEMENTS"). The right of PERMITTEE to install, maintain, and use the IMPROVEMENTS are subject to the following limitations, and conditioned upon PERMITTEE implementing the following protective measures and physical construction standards in connection with the IMPROVEMENTS:

a. Detailed design drawings prepared by a registered engineer depicting the IMPROVEMENTS within the RIGHT OF WAY AREA shall be provided to, reviewed by, and approved by CITY. The design drawings shall include an accurate depiction of the horizontal and vertical position of the proposed improvements relative to the RIGHT OF WAY AREA. The IMPROVEMENTS shall be designed to ensure that the installation and use of the IMPROVEMENTS does not create any additional structural or geotechnical load on the RIGHT OF WAY AREA. The design of the IMPROVEMENTS must allow for immediate access to the RIGHT OF WAY AREA for purposes of inspecting, cleaning, maintaining, repairing, and replacing CITY's existing improvements located within the RIGHT OF WAY AREA and/or installing additional improvements and appurtenances.

b. CITY reserves the right, and PERMITTEE hereby acknowledges, that CITY may reject without liability the design drawings for any proposed IMPROVEMENTS and/or require any changes thereto if CITY determines, in its sole and absolute discretion, that such action is necessary to ensure CITY can adequately inspect, clean, maintain, repair, and replace CITY's existing improvements located within the RIGHT OF WAY AREA and/or installing additional improvements and appurtenances within the RIGHT OF WAY AREA.

c. Upon CITY's approval of the final design drawings for the IMPROVEMENTS, such design drawings shall be attached hereto as Exhibit "B" and incorporated herein by this reference and considered a material part of this AGREEMENT. PERMITTEE shall install and maintain the IMPROVEMENTS in strict compliance with the approved final design drawings, and no changes or deviations therefrom shall be permitted without PERMITTEE first obtaining the prior written consent of CITY, which may be granted or denied in the CITY's sole reasonable discretion. The issuance of building and encroachment permits by the CITY for any changes and modifications shall be presumed to constitute consent of such changes and modifications under this AGREEMENT.

d. After execution of this Agreement, the CITY approved drawings, which PERMITTEE acknowledges and agrees will represent "as-built" record drawings of the

PRIVATELY OWNED AND MAINTAINED IMPROVEMENTS, will be attached hereto as Exhibit A upon approval by the CITY of such drawings.

e. PERMITTEE shall reimburse CITY for any and all expenses incurred by CITY for work to support or protect the RIGHT OF WAY AREA within thirty (30) days after receiving written demand and a statement from CITY detailing such costs. In the event PERMITTEE fails to perform work to support or protect the RIGHT OF WAY AREA within thirty (30) days after receiving written notice from CITY of such failure, or if CITY must immediately perform such work in the event of an emergency or to perform legally mandated duties, CITY may proceed with such work at the expense of PERMITTEE. PERMITTEE shall reimburse City within thirty (30) days after receiving written demand and a statement from CITY detailing the costs incurred by CITY.

f. PERMITTEE shall be required to obtain all other necessary and required licenses, permits and authorizations from any governmental agency with jurisdiction over the IMPROVEMENTS and to pay all fees and charges associated therewith prior to commencing any work on the IMPROVEMENTS. This AGREEMENT does not constitute, nor grant, permission to use or occupy property not belonging to, or under the control of CITY, and permission to use or occupy such property must be obtained from the owner or controller of such property, separate from and in addition to this AGREEMENT.

g. PERMITTEE shall not alter, replace, or otherwise change the IMPROVEMENTS without complying with the terms of this Section 2.

h. PERMITTEE shall complete all public improvements, Project Number 2-1353 under Encroachment Permit E-EN21-0015, prior to first building occupancy.

3. Repair of Damage. Any damage caused directly or indirectly by PERMITTEE to the RIGHT OF WAY AREA or to CITY's improvements therein and other property shall be repaired by CITY, at PERMITTEE's sole cost and expense, or if authorized by CITY may be repaired by PERMITTEE at its sole cost and expense. If CITY elects to perform the repair work itself, PERMITTEE shall reimburse CITY for the full costs of the repair work within thirty (30) days after receiving written demand and a statement from CITY detailing such costs.

4. Termination. The term of this AGREEMENT shall commence on the last date of execution and shall run until CITY or PERMITTEE elects to terminate the AGREEMENT. Either Party may terminate this AGREEMENT for convenience provided that the Party terminating this Agreement provides the other Party with thirty (30) days written notice of its election to terminate this AGREEMENT and PERMITTEE shall abide by the obligations set forth in Section 10 of this Agreement, provided that upon the termination of this AGREEMENT by CITY, PERMITTEE shall have ninety (90) days to remove all IMPROVEMENTS placed on, constructed or maintained by PERMITTEE within the RIGHT OF WAY AREA. If PERMITTEE fails to abide by the removal order of CITY within the time prescribed, CITY shall have the right to remove the IMPROVEMENTS without reimbursement to PERMITTEE and the reasonable cost of such removal shall be paid by PERMITTEE to CITY, and shall constitute a debt owed to CITY which shall be paid within sixty (60) days after PERMITTEE receives written demand and a statement from CITY detailing such costs. In the event payment is not made within said sixty (60) day

period, the payment shall include interest at a rate of ten percent (10%) per annum from the end of the sixty (60) day period until paid. CITY is hereby authorized to record a Notice of Termination of Encroachment Permit after the termination of the 90-day period referenced above.

5. Waiver and Release. PERMITTEE, in perpetuity, expressly waives, releases and relinquishes any and all claims, causes of action, rights and remedies PERMITTEE may now or hereafter have against CITY, and its officials, officers, employees, and agents, whether known or unknown, with respect to liability for any damage to or loss, upon, above, beneath, or across the RIGHT OF WAY AREA pursuant to this AGREEMENT unless such damage or loss is caused by the negligence or willful misconduct of CITY. As a material part of CITY's decision to issue this AGREEMENT, PERMITTEE hereby assumes all risk of damage to the IMPROVEMENTS in, upon, or about the RIGHT OF WAY AREA arising, from any cause attributable to CITY's exercising its rights hereunder or under the RIGHT OF WAY, and PERMITTEE hereby waives all claims in respect thereto against CITY, except if caused by the negligence or willful misconduct of CITY.

PERMITTEE HEREBY ACKNOWLEDGES THAT IT HAS READ AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 ("SECTION 1542"), WHICH IS SET FORTH BELOW:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

BY INITIALING BELOW, PERMITTEE HEREBY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE MATTERS WHICH ARE THE SUBJECT OF THE FOREGOING WAIVERS AND RELEASES:

PERMITTEE's Initials

The waivers and releases by PERMITTEE contained herein shall survive the term of this AGREEMENT and shall be binding upon the assignees, transferees, and successors in interest of PERMITTEE.

6. Access, Restricted Use, and Temporary Removal of Improvements. PERMITTEE acknowledges that the RIGHT OF WAY AREA contains certain public improvements, collectively and hereinafter referred to as PUBLIC IMPROVEMENTS. In order for CITY to exercise its rights with respect to the PUBLIC IMPROVEMENTS, CITY shall exercise reasonable efforts to notify PERMITTEE either in writing or by telephone, of the need to gain access to, temporarily restrict the use of, and if necessary temporarily remove, the IMPROVEMENTS. PERMITTEE hereby agrees that upon written or telephonic notice from CITY, PERMITTEE shall at its own cost and expense do one or more of the following as requested by CITY in the notice: (1) within twenty-four (24) hours after receiving notice, provide CITY access to the IMPROVEMENTS (or the appropriate portion thereof); (2) within twenty-four (24)

hours after receiving notice, temporarily restrict use of the IMPROVEMENTS for the reasonable period requested by CITY as may be necessary to allow CITY continuous access to the IMPROVEMENTS and unrestricted use of the RIGHT OF WAY AREA; and (3) within a reasonable time period after receiving the notice as requested by CITY, temporarily remove the IMPROVEMENTS (or the appropriate portion thereof) as may be necessary to allow CITY to make any repairs, replacement, or improvements to the PUBLIC IMPROVEMENTS, and when notified restore the IMPROVEMENTS to their working condition. If PERMITTEE fails to remove the IMPROVEMENTS (or the appropriate portion thereof) within said time period, for whatever reason, then CITY shall have the right to remove the IMPROVEMENTS (or the appropriate portion thereof) without reimbursement to PERMITTEE and without any obligation to restore, replace, or repair the removed IMPROVEMENTS. In the case of an emergency, CITY shall have immediate access to the IMPROVEMENTS (or the appropriate portion thereof) without written or telephonic notice to PERMITTEE or reimbursement to PERMITTEE. CITY shall provide notice of the emergency to PERMITTEE as soon as possible, and upon receipt of such notice PERMITTEE shall immediately cease all further use of the IMPROVEMENTS until the emergency has been mitigated. The term "emergency" shall be defined in accordance with California law and in general, shall be considered as an unforeseen circumstance which calls for immediate action.

7. Recovery of Costs for Enforcement of Permit. The terms of this AGREEMENT may be enforced by CITY or its successors or assigns. In the event of any controversy, claim or dispute relating to this AGREEMENT, or the breach thereof, the prevailing party shall be entitled to recover from the other party reasonable expenses, attorneys' fees and costs.

8. Damage to PUBLIC IMPROVEMENTS. PERMITTEE shall pay to CITY, within sixty (60) days of written notice from CITY and a statement detailing such costs and expenses, all reasonable costs and expenses which result from any damage to PUBLIC IMPROVEMENTS, where such damage is caused by the location, construction, maintenance, reconstruction, repair, use, or removal of the IMPROVEMENTS. In the event payment is not made within said sixty (60) day period, said payment shall include interest at a rate of ten percent (10%) per annum from the end of said sixty (60) day period until paid.

9. Revocation of Permit. Notwithstanding any other term or provision of this AGREEMENT, CITY shall have the right to revoke this AGREEMENT for any of the following reasons: (a) a breach by PERMITTEE of any covenant or term of this AGREEMENT, (b) a default by PERMITTEE of any term or provision of this AGREEMENT, or (c) abandonment by PERMITTEE of the use of the IMPROVEMENTS, or any part thereof, for a continuous period of six (6) months. Notification of such revocation shall be in writing. Any waiver by CITY of any breach by PERMITTEE shall not constitute a waiver of the right to revoke this AGREEMENT for any subsequent breach which may occur, or to enforce any other provision of this AGREEMENT. Upon revocation, PERMITTEE shall remove all IMPROVEMENTS and restore the RIGHT OF WAY AREA as herein provided.

10. Restoration of Right of Way Area. Upon revocation or termination of this AGREEMENT in any manner provided in this AGREEMENT, PERMITTEE, upon demand of CITY and at PERMITTEE's own cost and expense, shall abandon the use of the IMPROVEMENTS and remove it and restore the RIGHT OF WAY AREA to the same condition

in which it existed prior to the placing of the IMPROVEMENTS, reasonable wear and tear excepted. In no event shall PERMITTEE have any claim against the CITY for any of the costs of constructing, maintaining or removing the IMPROVEMENTS. In case PERMITTEE shall fail to restore the RIGHT OF WAY AREA as provided herein within 30 (thirty) calendar days after the effective date of revocation, CITY may proceed with such work at the expense of PERMITTEE or may assume title and ownership of the IMPROVEMENTS and any other property of PERMITTEE located on or within the RIGHT OF WAY AREA. Upon CITY's review, PERMITTEE will within 10 days, install and maintain necessary temporary safety fences, signs, or warning tapes as required to mitigate public safety hazards following removal of the lighting facilities and create a safe condition within public RIGHT OF WAY AREA until the restoration of the RIGHT AWAY is complete. No revocation hereof shall release PERMITTEE from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date the IMPROVEMENTS are removed, and the RIGHT OF WAY AREA is restored as provided above.

11. Hazardous Materials Use.

a. PERMITTEE covenants that it will not handle or transport Hazardous Materials on the IMPROVEMENTS or the RIGHT OF WAY AREA. As used in this AGREEMENT, the term "Hazardous Materials" means: (a) any substance, products, waste, or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 United States Code Section 9601 et seq.; the Resources Conservation and Recovery Act, 42 United States Code Section 6901 et seq.; the Hazardous Materials Transportation Conservation and Recovery Act, 42 United States Code Section 1801 et seq.; the Clean Water Act, 33 United States Code Section 1251 et seq.; the Toxic Substances Control Act, 15 United States Code Section 2601 et seq.; the California Hazardous Waste Control Act, Health and Safety Code Section 25100 et seq.; the Hazardous Substance Account Act, Health and Safety Code Section 25330 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Section 25249.5 et seq.; California Health and Safety Code Section 25280 et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Section 25170.1 et seq.; California Health and Safety Code Section 25501 et seq. (Hazardous Materials Release Response Plans and Inventory); or the California Porter-Cologne Water Quality Control Act, Water Code Section 13000 et seq., all as amended (the above cited California state statutes are hereinafter collectively referred to as "the State Toxic Substances Law"); or any other federal, state, or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, now or at any time hereinafter in effect; (b) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court; (c) petroleum or crude oil, other than petroleum and petroleum products which are contained within regularly operated motor vehicles; and (d) asbestos.

In the event the IMPROVEMENTS are now or in the future used in the handling or transporting of Hazardous Materials, PERMITTEE agrees fully to comply with all applicable federal, state, and local laws, rules, regulations, orders, decisions and ordinances (hereinafter referred to as

“Hazardous Materials Standards”) concerning Hazardous Materials. PERMITTEE further agrees that at CITY’s request it will furnish CITY with proof, satisfactory to CITY, that PERMITTEE is in compliance with all such laws, rules, regulations, orders, decisions and ordinances.

b. Notwithstanding anything else contained in this AGREEMENT and to the fullest extent permitted by law, in case of a breach of the obligations contained in this Section, PERMITTEE agrees to assume liability for and to save, indemnify, defend and hold harmless CITY from and against any and all injuries to any person, including wrongful death, and damage to property, including without limitation, property of CITY and PERMITTEE, and all related expenses, including without limitation reasonable attorneys’ fees, investigators’ fees, litigation expenses, and mitigation costs resulting in whole or in part from PERMITTEE’s failure to comply with any Hazardous Materials Standards issued by any governmental authority concerning Hazardous Materials. PERMITTEE, at its cost, shall assume the defense of all claims, in accordance with Section 15 hereof. PERMITTEE agrees to reimburse CITY for all reasonable costs of any kind incurred as a result of the PERMITTEE’s failure to comply with this Section, including, but not limited to, judicial or administrative fines, penalties, clean-up and disposal costs, and reasonable legal costs incurred as a result of PERMITTEE’s handling, transporting, or disposing of Hazardous Materials on, over, or across the IMPROVEMENTS and RIGHT OF WAY AREA.

12. Standards. PERMITTEE shall comply with all statutes, ordinances, rules, regulations, orders and decisions (hereinafter referred to as “Standards”); issued by any federal, state or local governmental body or agency established thereby relating to PERMITTEE’s use of the IMPROVEMENTS and RIGHT OF WAY AREA hereunder. In its use of the IMPROVEMENTS and RIGHT OF WAY AREA, PERMITTEE shall at all times be in full compliance with all Standards, present or future, including, but not limited to, Standards concerning air quality, water quality, noise, and Hazardous Materials. In the event PERMITTEE fails to be in full compliance with Standards, CITY may, but shall not be obligated to, after giving notice of the failure to PERMITTEE, and if PERMITTEE, within fifteen (15) days of such notice, fails to correct such non-compliance, take whatever action it determines in its sole discretion to be necessary to protect the PUBLIC IMPROVEMENTS, RIGHT OF WAY AREA, and other adjacent property. PERMITTEE shall reimburse CITY for all reasonable costs (including but not limited to, consulting, engineering, clean-up and disposal, and reasonable legal costs) incurred by CITY as a result of PERMITTEE’s failure to comply with such Standards, and also such reasonable costs incurred by CITY in abating a violation of such Standards, protecting against a threatened violation of such Standards, defending any claim of violation of such Standards in any proceeding before any agency or court, and paying any fines or penalties imposed for such violations. PERMITTEE shall, to the extent permitted by law, assume liability for and shall save and hold harmless CITY from any claim of a violation of the Standards regardless of the nature thereof or the agency or person asserting such claim, which results from PERMITTEE’s use of the IMPROVEMENTS and RIGHT OF WAY AREA; provided, however, that the foregoing shall not apply to the extent of CITY’s negligence or willful misconduct. PERMITTEE, at its cost, shall assume the defense of all such claims.

13. Tests and Inspections. CITY shall have the right at any time to inspect the IMPROVEMENTS, RIGHT OF WAY AREA, and PUBLIC IMPROVEMENTS so as to monitor compliance with this AGREEMENT. If, in CITY’s sole judgment, any installation, use, or

condition of the IMPROVEMENTS may have an adverse effect on the PUBLIC IMPROVEMENTS, RIGHT OF WAY AREA, or CITY's operations, CITY shall be permitted to, at its sole cost and expense, conduct any tests or assessments, including but not limited to environmental assessments, of, on or about the RIGHT OF WAY AREA and PUBLIC IMPROVEMENTS, as it determines to be necessary or useful to evaluate the condition of the RIGHT OF WAY AREA and PUBLIC IMPROVEMENTS. PERMITTEE shall cooperate with CITY in any tests or inspections deemed necessary by CITY. PERMITTEE shall pay or reimburse CITY, as appropriate, for all reasonable costs and expenses incurred due to any necessary corrective work and inspections thereafter within thirty (30) days of a request for payment and a statement detailing such costs and expenses.

14. Insurance.

a. Types; Amounts. PERMITTEE shall obtain, and shall require any subcontractor to obtain, insurance in the amounts described below unless specifically altered or waived by CITY ("Required Insurance"). If any of the Required Insurance contains a general aggregate limit, such insurance shall apply separately to this License or be no less than two times the specified occurrence limit.

- (i) *General Liability Insurance.* PERMITTEE shall maintain occurrence version general liability insurance, or equivalent form, with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence. The general liability insurance policy must include coverage for the following:
 - (1) Bodily Injury and Property Damage
 - (2) Personal Injury/Advertising Injury
 - (3) Premises/Operations Liability
 - (4) Products/Completed Operations Liability
 - (5) Explosion, Collapse and Underground (UCX) exclusion deleted
 - (6) Contractual Liability with respect to this AGREEMENT
 - (7) Broad Form Property Damage
 - (8) Independent Contractor Coverage
- (ii) *Business Automobile Liability Insurance.* PERMITTEE shall maintain business automobile liability insurance with an each accident limit of not less than One Million Dollars (\$1,000,000) for bodily injury and property damage, which shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

- (iii) *"All Risk" Property Insurance.* PERMITTEE shall maintain a policy of property insurance for perils usual to a standard "all risk" insurance policy on all its improvements or alterations in, on, or about the RIGHT OF WAY AREA, with limits equal to the value of all such improvements or alterations.

b. General Provisions. The general liability insurance policy and the business automobile liability insurance policy shall (1) name CITY, its officials, officers, employees and agents as additional insureds; (2) be endorsed to waive subrogation against CITY, its officials, officers, employees and agents as additional insureds; and (3) be primary and non-contributory. All Required Insurance herein shall contain standard separation of insureds provisions, and shall contain no special limitations on the scope of protection provided to CITY, its officials, officers, employees and agents.

c. Certificates; Insurer Rating; Cancellation Notice. Prior to conducting any work in RIGHT OF WAY AREA, PERMITTEE shall furnish to CITY properly executed certificates of insurance which evidence all Required Insurance. PERMITTEE shall maintain the Required Insurance at all times while this AGREEMENT is in effect, and shall replace any certificate, policy, or endorsement which will expire prior to that date. All policies shall be endorsed to provide the Required Insurance shall not be suspended, voided, reduced, canceled, or allowed to expire except on thirty (30) days prior written notice to CITY. Unless approved in writing by CITY, PERMITTEE shall place the Required Insurance with insurers licensed to do business in the State of California and with a current A.M. Best rating of at least A-:VII.

d. Waiver of Subrogation. PERMITTEE releases CITY, its officials, officers, employees and agents from any claims for damage or harm to any person, the REAL PROPERTY, the RIGHT OF WAY AREA, or the IMPROVEMENTS, caused by, or which result from, risks insured under any insurance policy carried by PERMITTEE at the time of such damage or harm. PERMITTEE shall cause each insurance policy required herein to provide a waiver of subrogation in favor of CITY, its officials, officers, employees and agents.

15. Indemnity. PERMITTEE hereby agrees to defend, indemnify and hold CITY and its officials, officers, agents and employees free and harmless from and against any and all claims, demands, causes of action, costs, liabilities, expenses, losses, damages or injuries of any kind in law or equity, to persons or property, including wrongful death, in any manner arising out of or incident to any acts, omissions or willful misconduct of PERMITTEE, its partners, affiliates, agents officials, officers or employees in performance of this AGREEMENT, use of the REAL PROPERTY or RIGHT OF WAY AREA, or the construction, use, or operation of the IMPROVEMENTS. PERMITTEE shall further defend, indemnify and hold harmless the CITY and its officials, officers, agents and employees from all claims, demands, lawsuits, writs of mandamus, and other actions or proceedings (brought against the CITY or its departments, commissions, agents, officers, officials, or employees to challenge, attack seek to modify, set aside, void or annul any City decision made in connection with this AGREEMENT or PERMITTEE's use of the RIGHT OF WAY AREA. PERMITTEE shall defend, with counsel of CITY's choosing and at PERMITTEE's sole expense, any and all aforesaid suits, actions or proceedings, legal or affirmative, that may be brought or instituted against CITY, its officials, officers, agents or employees. PERMITTEE shall pay and satisfy any judgment, award or decree

that may be rendered against CITY, its officials, officers, agents or employees. PERMITTEE shall reimburse such parties for any and all legal expenses and costs incurred by one or all of them in connection with this AGREEMENT or the indemnity herein provided. PERMITTEE's obligation shall survive termination or expiration of this AGREEMENT, and shall not be restricted to insurance proceeds, if any, received by CITY or its officials, officers, agents or employees.

16. Covenant Running With Land. This AGREEMENT shall be deemed a covenant running with the REAL PROPERTY. All of the covenants, obligations, and provisions of this AGREEMENT shall be binding upon and inure to the benefit of successors, legal representatives and assigns of the Parties. Every person who now or hereafter owns or acquires any right, title, or interest in and to any portion of the REAL PROPERTY shall be conclusively deemed to have notice of this AGREEMENT, whether or not reference to this AGREEMENT is contained in the instrument by which such person acquires an interest in the REAL PROPERTY. Therefore, each and every contract, deed or other instrument hereinafter executed, covering or conveying the REAL PROPERTY shall conclusively be deemed to have been executed, delivered and accepted subject to this AGREEMENT.

17. Miscellaneous.

a. Amendments. The provisions of this AGREEMENT may be amended by mutual written consent of both parties.

b. Notices. All notices permitted or required under this AGREEMENT shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

PERMITTEE: Milpitas-District 4 Owner, LLC
4901 Birch Street
Newport Beach, CA 92660
Attn: Michael Barnettler
Secretary

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

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

c. Entire Understanding. This AGREEMENT constitutes the entire understanding between the Parties, and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein.

d. Invalidity. If any provision of this AGREEMENT is invalid or unenforceable with respect to any Party, the remainder of this AGREEMENT or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this AGREEMENT shall be valid and enforceable to the fullest extent permitted by law.

e. Successors and Assigns. This AGREEMENT shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

f. 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, PERMITTEE expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

g. Exhibits. All exhibits attached hereto form material parts of this AGREEMENT.

18. Permit Fee. As a condition to allow the privately owned and maintained pedestrian lights to remain within the public right of way, PERMITTEE agrees to compensate CITY in the amount of Three Thousand Dollars (\$3,000) to offset legal and related expenses in return for granting an Encroachment Permit pursuant to this AGREEMENT, which shall be due and payable to CITY within thirty (30) days of the execution date of this AGREEMENT.

19. Possessory Interest. In accordance with Revenue and Taxation Code Section 107.6, this AGREEMENT may create a possessory interest subject to personal property taxation for which PERMITTEE shall be responsible.

20. Effective Date. The Parties hereby agree that the effective date of this AGREEMENT, and the effective date for all obligations of the Parties hereunder, shall be the date on which this AGREEMENT has been fully executed by both Parties.

SIGNATURES ON FOLLOWING PAGE

**SIGNATURE PAGE TO
ENCROACHMENT AND MAINTENANCE AGREEMENT
BETWEEN
CITY OF MILPITAS
AND MILPITAS – DISTRICT 4 OWNER, LLC.**

IN WITNESS WHEREOF, this AGREEMENT and the Encroachment Permit granted hereby has been duly issued by CITY on the date of execution by CITY below.

**ACCEPTANCE OF TERMS
AND CONDITIONS OF AGREEMENT:**

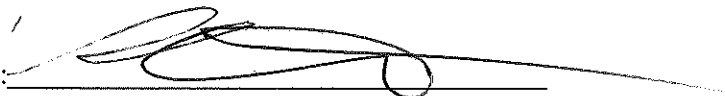
PERMITTEE

By: MILPITAS – DISTRICT 4 OWNER, LLC

By: Milpitas – District 4 Partners, LLC
a Delaware limited liability company,
its Sole Member

By: Milpitas – District 2 Associates, LLC
a Delaware limited liability company,
its Managing Member

By: Lyon Housing (Milpitas – District 2) LIX, LLC
a Delaware limited liability company,
its Managing Member

By: 

Name: Michael Barmettler

Title: Authorized Signatory

CALIFORNIA NOTARY ACKNOWLEDGMENT

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

STATE OF CALIFORNIA)

COUNTY OF ORANGE)

On November 21, 2022, before me, Julie-Anne Kurt, a Notary Public, personally appeared Michael Barnettler, 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 she/he/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.

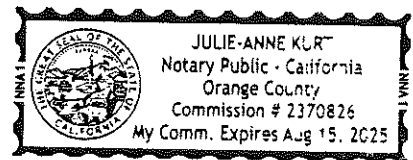
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Julie Anne Kurt

(Seal)



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: _____
Steven Erickson, City Engineer

EXHIBIT "A"
LEGAL DESCRIPTION OF REAL PROPERTY

"EXHIBIT A"
LEGAL DESCRIPTION

All that real property situated in the City of Milpitas, County of Santa Clara, State of California, described as follows:

Lot 4 of Tract 10476, filed January 20, 2020, in Map Book 929, Pages 5-9, inclusive, Santa Clara County Records.

Containing 2.29 acres, more or less.

EXHIBIT "B"
RIGHT OF WAY AREA AND FINAL DESIGN DRAWINGS FOR IMPROVEMENTS
APPROVED BY CITY

[illegible]

Vitor Montano
Monday, November 14, 2022 5:45:09 PM
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CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution Reviewing and Accepting the Annual Development Impact Fee Annual Report for the Calaveras Boulevard Widening Traffic Impact Fee, the Transit Area Specific Plan (TASP) Impact Fee, and the Storm Drain Fee for the Fiscal Year Ended June 30, 2022 (Staff Contact: Lauren Lai, Finance Director, 408-586-3111)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	12/20/2022
	<u>Recommendation:</u> Adopt a resolution consistent with the Mitigation Fee Act to review and accept the annual development impact fee disclosure information for the Calaveras Blvd Widening Traffic Impact Fee, Transit Area Specific Plan Impact Fee and Storm Drain Fee for the Fiscal Year Ended June 30, 2022.

Background:

California Government Code Section 66000 et seq. ("Mitigation Fee Act") requires local agencies to provide an accounting of fees charged for development projects. The City has two basic accounting and reporting responsibilities under the Government Code. Section 66001(d) requires that, five years after collecting a development fee subject to this Code section and every five years thereafter, the local agency shall make findings with respect to any portion of the fee remaining unexpended, whether committed or uncommitted. If the required findings are not made, the unexpended funds shall be refunded to the current property owners.

Five-year findings must:

1. Identify the purpose of the fee;
2. Demonstrate a reasonable relationship between the fee and the purpose for which it was charged;
3. Identify all sources and amounts of funding anticipated to complete financing of incomplete improvements; and
4. Designate the approximate dates on which these funding sources can be expected to be deposited into the appropriate account or fund.

When sufficient funds have been collected to complete financing on incomplete public improvements, the local agency has 180 days to identify an approximate date by which the construction of the public improvement will begin or else is required to refund the unexpended fees, including accrued interest, to the current owner of lots or units of the development project.

For Fiscal Year ending on June 30, 2019, the City reported its last Five-Year findings for the remaining unexpended fee proceeds for the Calaveras Blvd Widening Traffic Impact Fee, and Transit Area Specific Plan Impact Fee. The City will need to report the next Five-Year findings report for Fiscal Year ending on June 30, 2024.

The second requirement set forth under Government Code Section 66006(b)(1)* provides that each local agency is required on an annual basis, within 180 days after fiscal year end, for each separate account, to make available to the public the following information:

1. Brief description of the type of fee in the account;
2. The amount of the fee;
3. The account's beginning and ending balance;

4. The amount of fees collected and the interest earned;
5. A description of the improvements on which the funds were expended and the amount expended on each improvement including the percentage of the improvement funded with development fees;
6. An approximate date by which the construction of a public improvement will begin if the local agency determines that sufficient funds have been collected to complete financing on the incomplete improvement;
7. A description of each inter-fund transfer or loan made from the account; and
8. The amount of any refunds or allocations made pursuant to Code Section 66001.

The City deposits impact fees subject to the above disclosure in the Calaveras Boulevard Widening Traffic Impact Fee Fund, Transit Area Specific Plan (TASP) Impact Fee Fund, and Storm Drain Development Fund to track these development related fees. Interest income is allocated to these funds based on their respective monthly cash balances. Expenditures from these funds were in the form of capital improvement projects to either renovate existing facilities or maintain the existing level of service, consistent with the General Plan and approved Capital Improvement Plan, due to increased demand related to the development projects.

Analysis:

Annual reports (included in the agenda packet) summarize the Fiscal Year 2021-2022 fund activity for Calaveras Boulevard Widening Traffic Impact Fee (Exhibit 1); Transit Area Specific Plan (TASP) Impact Fee (Exhibit 2); and Storm Drain Development Fee (Exhibit 3). The reports show the amount of fees collected in fiscal year 2021-2022, interest income, a brief description of the projects funded, the percentage of the projects funded by the development fees, and the beginning and ending balance of the funds. The table below shows the beginning fund balance, revenues received, expenditures and ending fund balance for each impact fee for Fiscal Year 2021-2022. The plan to expend the funds available in ending fund balances for the various fees is outlined in the attached reports. For the TASP Impact Fee, for example, the unexpended fee proceeds will be used to fund necessary infrastructure (e.g.: A community center/recreation facility, a park, Montague Expressway widening) as identified in the Transit Area Development Impact Fee Report, dated February 2014, and the City's Capital Improvement Program 2022-2026 Final Report.

FY 2021-22	Calaveras Blvd Widening Traffic Impact Fee	TASP Impact	Storm Drain Development*
Beginning Fund Balance	\$1,671,960	\$46,952,647	\$520,283
Revenues	84,325	4,665,390	752,921
Expenditures	(1,675,575)	(6,978,000)	0
Loan Payment	0	1,198,838**	0
Ending Fund Balance	\$80,710	\$45,838.875	\$1,273,204

*Annual reporting for the Storm Drain Fee is subject to Government Code Section 66013, however those reporting requirements are substantially similar to the annual reporting requirements under Government code section 66006 and are referred to collectively here for convenience.

**Payment received for Loan to Piper Montague Infrastructure Plan (PMIP) Fund.

Policy Alternative:

Alternative 1: Do not adopt the resolution and accept the annual development impact fee disclosure information.

Pros: There are no pros to not adopt the resolution and accept the annual development impact fee disclosure information.

Cons: Not adopting the resolution and accepting the annual development impact fee disclosure information will violate the Mitigation Fee Act.

Reason not recommended: None

Fiscal Impact:

Not applicable.

California Environmental Quality Act:

The action being considered has no potential for causing a significant effect on the environment and is exempt from the California Environmental Quality Act (CEQA) Guidelines Section 15061 (b)(3).

Recommendation:

Adopt a resolution consistent with the Mitigation Fee Act to review and accept the annual development impact fee disclosure information for the Calaveras Blvd Widening Traffic Impact Fee, Transit Area Specific Plan Impact Fee and Storm Drain Fee for the Fiscal Year Ended June 30, 2022.

Attachment:

Resolution including Annual Reports as Exhibits

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS REVIEWING AND ACCEPTING ANNUAL DEVELOPMENT IMPACT FEE DISCLOSURE INFORMATION FOR THE CALAVERAS BOULEVARD WIDENING TRAFFIC IMPACT FEE, THE TRANSIT AREA SPECIFIC PLAN IMPACT FEE AND THE STORM DRAIN FEE PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTIONS 66006 and 66013

WHEREAS, the Mitigation Fee Act, Government Code Section 66000 *et seq.*, authorizes the City of Milpitas (“City”) to impose, collect, and expend mitigation fees to offset the impacts of development within the City; and

WHEREAS, pursuant to its authority under the Mitigation Fee Act (Government Code §§ 66000 *et seq.*) the City Council established, adopted, and imposed a Calaveras Boulevard Traffic Impact Fee, a Transit Area Specific Plan (“TASP”) Impact Fee and a Storm Drain Fee (collectively, the “Fees”); and

WHEREAS, the City has deposited all Fees in separate non-commingled funds (“Funds”) established for such a purpose; and

WHEREAS, the City has made available to the public within one hundred eighty (180) days following the last day of the fiscal year the annual accounting information (“Annual Report”) required by the Mitigation Fee Act related to each of the Fees; and

WHEREAS, the City has mailed notice at least fifteen (15) days prior to this meeting to all interested parties who have requested notice of any meeting relative to the City’s imposition of the Fees and has held a duly noticed, regularly scheduled public meeting at which oral and written testimony was received regarding the Annual Reports at least fifteen (15) days after the City made this information publicly available.

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. In accordance with Government Code Section 66006(b) and Section 66013, the City Council has reviewed and approves the Annual Reports for each of the Fees, which are attached to this Resolution as **Exhibits 1-3**, and are also placed on file with the City Clerk. The Council, based upon the information contained in the Annual Report and the remaining need for the unexpended funds, finds as follows:
 - a. That each of the Annual Reports describe the types of Fees contained in each of the Funds, including the amount of the fees, the beginning and ending balance of the Funds, as well as the amount of fees collected, and the interest earned thereon.
 - b. That each of the Annual Reports identifies each public improvement on which the Fees were expended, the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with the Fees.
 - c. That there were interfund transfers or loans made from the Funds, as noted.
 - d. That sufficient funds have not been collected to complete the financing of any incomplete public improvement, and that there were no refunds or allocations made of the Fees.
3. Pursuant to these findings, and at this time, there shall not be a refund of any unexpended Fees.

PASSED AND ADOPTED this _____ day of _____, 2022, by the following vote:

Item # 11.

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi, City Attorney

City of Milpitas

Annual Report of Development Fees and Expenditures for the Fiscal Year ended June 30, 2022

Exhibit 1

Calaveras Boulevard Widening Traffic Impact Fee

Description:

In order to implement the goals and objectives of the City of Milpitas General Plan and to mitigate the traffic impacts caused by new development in the City of Milpitas, certain roadways such as Calaveras Boulevard must be widened.

Fee:

The amount of the fee as of June 30, 2022 was as follows:

Area Covered	Type of Dwelling	Amount
Citywide except TASP to widen Calaveras Boulevard	Residential 5 or more units	\$257 per dwelling unit
	Retail Development of 1,000 or more square feet	\$1,096 per thousand square feet
	Office Development of 1,000 or more square feet	\$544 per thousand square feet
	Other Uses	A focused nexus study will be required

Exhibit 1- continued

Item # 11.

Calaveras Widening Impact Fee Fund
Statement of Revenues, Expenditures, and Changes in Fund Balances for

Fiscal Year 2021-2022

Fees collected and interest earned:

Revenues

Traffic Fees	\$ 78,175
Interest	<u>6,150</u>
Total Revenues	<u>84,325</u>

Fees expended on public improvement:

Expenditures

CP 4258 – Calaveras Blvd. Widening Project	1,432,990
Refund of overpaid traffic fees for the McCarthy Creekside Project by Creekside Milpitas 2, LLC in November 2018	<u>242,585</u>
Total Expenditures	<u>1,675,575</u>

Excess/(deficiency) of revenues over/ (under) expenditures	(1,591,250)
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Beginning and ending balance:

Fund Balance, beginning of year	<u>1,671,960</u>
Fund Balance, end of year	<u>\$80,710</u>

Inter-fund transfer or loan made description:

None

Refunds made from surplus fees and amount of any allocations made:

Upon further review of the March 2016 Traffic Operations Analysis Hexagon Transportation Consultants, staff agreed the Calaveras Widening Fee calculation needed to be recalculated using "Other-Uses" land-use designation and resulted in \$242,585 refund to the developer.

CIP/Item Number and Title	Project Description	% of the project funded with development fees	Cons Commencement Date
CP 4258 – Calaveras Blvd. Widening Project	This project provides a minimum local match for the replacement of the existing roadway bridges, built in 1967, on Calaveras Boulevard between Milpitas Boulevard and Abel Street. The roadway is a State owned and operated highway (SR 237) that connects to I-680 and I-880 freeway through the City. It is a critical transportation artery that provides access to local streets for residents and businesses. The 6-lane roadway reduces to 4-lanes at the bridge structures creating traffic congestion. The Santa Clara Valley Transportation Authority (VTA) completed a project study report in 2009 and it was predicted that traffic congestion at the bridge structures would worsen as growth continues in the region. The widening of the bridge structures to 6-lanes was identified as a solution to provide traffic congestion relief in the area. The bridge will also include a 10-foot sidewalk and 6-foot bike lane in each direction.	31%	Planning only. Construction has not yet started.

Item # 11.

Annual Report for the Transit Area Specific Plan (TASP) Impact Fee

Fiscal Year ended June 30, 2022

Description:

Based on Resolution No. 8344 Exhibit A Transit Area Development Impact Fee Update Report prepared by Economic & Planning Systems, Inc., dated February 2014, the purpose of the Transit Area Specific Plan Impact fee is to fund the planning and development (as described in the Report) of an approximately 437-acre area in the southern portion of the City near the Great Mall shopping center to support more residents and workers with appropriately scaled utilities, parks, community facilities, and roadways.

Fee:

The amount of the fee as of June 30, 2022 was as follows:

Type of Dwelling	Amount
Residential	\$44,009 per unit
Retail	\$28.79 per square foot
Office	\$49.48 per square foot

Exhibit 2- Continued

Item # 11.

Transit Area Specific Plan (TASP) Impact Fee Fund
Statement of Revenues, Expenditures, and Changes in Fund Balances for

Fiscal Year 2021-2022

Fees collected and interest earned:

Revenues:

TASP Impact Fees	\$ 4,097,534
Interest	<u>567,856</u>
Total Revenues	<u>4,665,390</u>

Fees expended on public improvement (See table for % of cost funded with fees):

Expenditures:

1. CP 2006 - Transit Area Specific Plan Update (DB44)	100,000
2. CP 2016 - S. Milpitas Blvd. Veh. Bridge at Penitencia	3,300,000
3. CP 3490 – Capital Improvement Program Administration	78,000
4. CP 4258 – Calaveras Widening Project	<u>3,500,000</u>

Total Expenditures	<u>6,978,000</u>
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Excess (deficiency) of revenues over (under) expenditures	(2,312,610)
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Payment received for Loan to Piper Montague Infrastructure Plan (PMIP) fund	<u>1,198,838</u>
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Beginning and ending balance:

Fund Balance, beginning of year	<u>46,952,647</u>
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Fund Balance, end of year	<u>\$45,838,875</u>
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CIP/Item Number and Title	Project Description	% of the project funded with development fees	Cons Commencement Date
CP 2006 - Transit Area Specific Plan Update (DB44)	The Transit Area Specific Plan (TASP) was approved in 2008. There have been minor amendments to TASP focused primarily on individual properties, but no comprehensive evaluation of the plan and the effectiveness of its implementation has been made. Approximately 95% of the housing planned and cleared under CEQA for the area have been entitled or constructed. Approximately 50% of retail uses and none of the office have been developed. An evaluation of development projects proposed, entitled, or constructed; processes and regulations for development; changes to the land use diagram; and remaining development capacity should be undertaken. This project will include an update to the TASP EIR to provide environmental clearance for additional residential development.	100%	N/A
CP 2016 - S. Milpitas Blvd. Vehicle Bridge at Penitencia	This project provides for design and construction of a vehicular bridge over Penitencia Creek at the end of the new S. Milpitas Blvd. Extension. The vehicular bridge is part of the Transit Area Specific Plan (TASP) circulation infrastructure improvement to provide vehicular, bicycle and pedestrian connectivity between TASP developments, Milpitas BART station, Great Mall and surrounding residential developments.	100%	Design only. Construction has not yet started.
CP 3490 - Capital Improvement Program Administration	This project provides for the annual preparation of the Capital Improvement Program. Work includes program administration, printing, and software programming assistance.	20%	N/A
CP 4258 – Calaveras Blvd. Widening Project	This project provides a minimum local match for the replacement of the existing roadway bridges, built in 1967, on Calaveras Boulevard between Milpitas Boulevard and Abel Street. The roadway is a State owned and operated highway (SR 237) that connects to I-680 and I-880 freeway through the City. It is a critical transportation artery that provides access to local streets for residents and businesses. The 6-lane roadway reduces to 4-lanes at the bridge structures creating traffic congestion. The Santa Clara Valley Transportation Authority (VTA) completed a project study report in 2009 and it was predicted that traffic congestion at the bridge structures would worsen as growth continues in the region. The widening of the bridge structures to 6-lanes was identified as a solution to provide traffic congestion relief in the area. The bridge will also include a 10-foot sidewalk and 6-foot bike lane in each direction.	69%	Planning only. Construction has not yet started.

Inter-fund transfer or loan made description:

There is a \$614,491 loan to the Piper Montaque Infrastructure Plan (PMIP) fund

Refunds made from surplus fees and amount of any allocations made:

None

Annual Report Storm Drain Fee

Fiscal Year ended June 30, 2022

Description:

Prior to connection or discharge to any storm drain facility from a new development project, developers shall pay City a fee for connection/discharge to the City's storm drain system (Municipal Code XI-16-16). The purpose of the storm drain fee is to fund facilities necessary to provide storm drain services, and revenues derived from the fee imposed by the City shall be used solely for that purpose.

Fee:

The amount of the fee as of June 30, 2022 was as follows:

Type of Dwelling	Parcel Size	Per Parcel Fee
Connection Fees		
Single-family medium density	Equal or smaller than 8,710 square feet	\$1,100
Single-family low density	Between 8,711 and 43,560 square feet	\$1,916
Single-family	Between 1 acre and 4 acres	\$3,594
Single-family	Between 4 acre and 9 acres	\$4,792
Single-family	Greater than 9 acres	\$6,469
Multiple-family		\$16,771 per acre
Commercial, industrial, institutional, or mixed use sites		\$21,562 per acre
Schools with athletic fields		\$7,187 per acre
Parks		\$4,792 per park

Exhibit 3- continued

Item # 11.

Storm Drain Development Fund
Statement of Revenues, Expenditures, and Changes in Fund Balances for

Fiscal Year 2021-2022

Fees collected and interest earned:

Revenues:

Connection Fees	\$550,092
Funding returned from closed project CP 3713	12,813
Storm drain funding returned from project CP 3719	145,000
Interest	<u>45,016</u>

Total Revenues	<u>752,921</u>
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Excess (deficiency) of revenues over (under) expenditures	<u>752,921</u>
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Beginning and ending balance:

Fund Balance, beginning of year	<u>520,283</u>
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Fund Balance, end of year	<u>\$ 1,273,204</u>
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CIP Number	Project Description	% of the project funded with development fees	Construction commencement Date	Status Of Project
CP 3713 – Trash Removal Devices	This project evaluates locations for trash removal devices within the City's storm water collection system. Proposed work includes design and installation of two devices.	70%	2016	Closed
CP3719 – On-Call Storm Maintenance & Repair	This project provides for on-call repair and maintenance services at all City storm infrastructure, assets, and appurtenances. Work may include, but is not limited to, repair and replacement of electrical and mechanical systems (VFD & generators), motors and pumps, pipelines, aboveground/underground storage tanks, and other related improvements. All work will be performed on a priority and funding availability basis. Funding was swapped Mid-Year FY 2021-22 with General Government CIP Fund so currently 0% is funded with development fees.	0%	Repair and maintenance services	Closed

Refunds made from surplus fees and amount of any allocations made:

None

City of Milpitas
Annual Report of Development Fees and Expenditures for the
Fiscal Year ended June 30, 2022

Exhibit 1

Calaveras Boulevard Widening Traffic Impact Fee

Description:

In order to implement the goals and objectives of the City of Milpitas General Plan and to mitigate the traffic impacts caused by new development in the City of Milpitas, certain roadways such as Calaveras Boulevard must be widened.

Fee:

The amount of the fee as of June 30, 2022 was as follows:

Area Covered	Type of Dwelling	Amount
Citywide except TASP to widen Calaveras Boulevard	Residential 5 or more units	\$257 per dwelling unit
	Retail Development of 1,000 or more square feet	\$1,096 per thousand square feet
	Office Development of 1,000 or more square feet	\$544 per thousand square feet
	Other Uses	A focused nexus study will be required

Exhibit 1- continued

Item # 11.

Calaveras Widening Impact Fee Fund
Statement of Revenues, Expenditures, and Changes in Fund Balances for

Fiscal Year 2021-2022

Fees collected and interest earned:

Revenues

Traffic Fees	\$ 78,175
Interest	<u>6,150</u>
Total Revenues	<u>84,325</u>

Fees expended on public improvement:

Expenditures

CP 4258 – Calaveras Blvd. Widening Project	1,432,990
Refund of overpaid traffic fees for the McCarthy Creekside Project by Creekside Milpitas 2, LLC in November 2018	<u>242,585</u>
Total Expenditures	<u>1,675,575</u>

Excess/(deficiency) of revenues over/ (under) expenditures	(1,591,250)
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Beginning and ending balance:

Fund Balance, beginning of year	<u>1,671,960</u>
Fund Balance, end of year	<u>\$80,710</u>

Inter-fund transfer or loan made description:

None

Refunds made from surplus fees and amount of any allocations made:

Upon further review of the March 2016 Traffic Operations Analysis Hexagon Transportation Consultants, staff agreed the Calaveras Widening Fee calculation needed to be recalculated using "Other-Uses" land-use designation and resulted in \$242,585 refund to the developer.

CIP/Item Number and Title	Project Description	% of the project funded with development fees	Cons Commencement Date
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Item # 11.

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Fiscal Year ended June 30, 2022

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Fee:

The amount of the fee as of June 30, 2022 was as follows:

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Exhibit 2- Continued

Item # 11.

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3. CP 3490 – Capital Improvement Program Administration	78,000
4. CP 4258 – Calaveras Widening Project	<u>3,500,000</u>

Total Expenditures	<u>6,978,000</u>
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Excess (deficiency) of revenues over (under) expenditures	(2,312,610)
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Payment received for Loan to Piper Montague Infrastructure Plan (PMIP) fund	<u>1,198,838</u>
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Inter-fund transfer or loan made description:

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Refunds made from surplus fees and amount of any allocations made:

None

Annual Report Storm Drain Fee

Fiscal Year ended June 30, 2022

Description:

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Exhibit 3- continued

Item # 11.

Storm Drain Development Fund
Statement of Revenues, Expenditures, and Changes in Fund Balances for

Fiscal Year 2021-2022

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Revenues:

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Funding returned from closed project CP 3713	12,813
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Interest	<u>45,016</u>

Total Revenues	<u>752,921</u>
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Excess (deficiency) of revenues over (under) expenditures	<u>752,921</u>
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Beginning and ending balance:

Fund Balance, beginning of year	<u>520,283</u>
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Fund Balance, end of year	<u>\$ 1,273,204</u>
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CIP Number	Project Description	% of the project funded with development fees	Construction commencement Date	Status Of Project
CP 3713 – Trash Removal Devices	This project evaluates locations for trash removal devices within the City's storm water collection system. Proposed work includes design and installation of two devices.	70%	2016	Closed
CP3719 – On-Call Storm Maintenance & Repair	This project provides for on-call repair and maintenance services at all City storm infrastructure, assets, and appurtenances. Work may include, but is not limited to, repair and replacement of electrical and mechanical systems (VFD & generators), motors and pumps, pipelines, aboveground/underground storage tanks, and other related improvements. All work will be performed on a priority and funding availability basis. Funding was swapped Mid-Year FY 2021-22 with General Government CIP Fund so currently 0% is funded with development fees.	0%	Repair and maintenance services	Closed

Refunds made from surplus fees and amount of any allocations made:

None



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution Authorizing the City Manager to Issue a Purchase Order in the Amount of \$297,573.91 for the Purchase of Five Police Vehicles from the National Auto Fleet Group through a Cooperative Procurement Contract with Sourcewell (Staff Contact: Matthew Miller, Police Captain, 408-586-2522; Chris Schroeder, Purchasing Agent, 408-586-3161)
Category:	Consent Calendar-Public Safety
Meeting Date:	12/20/2022
	<u>Recommendation:</u> Adopt a resolution authorizing the City Manager to issue a purchase order in the amount of \$297,573.91 for the purchase of five police vehicles from the National Auto Fleet Group through a Cooperative Procurement Contract with Sourcewell and find a CEQA exemption.

BACKGROUND:

On June 7, 2022 as part of the fiscal year 2022-23 operating budget, City Council approved the purchase of five (5) Patrol Services vehicles for the Police Department to replace existing vehicles consistent with Section 30.00 of the Memorandum of Understanding between the City and the Milpitas Police Officers Association, which states in part that “reasonable efforts shall be made to replace Police patrol vehicles before such vehicles have acquired 75,000 miles, provided that if said vehicles are safe and suitable for patrol purposes after 75,000 miles, they may remain in service for another 15,000 miles or a total of 90,000 miles.” All five vehicles recommended for replacement have mileage between 95,000 and 112,000 miles.

ANALYSIS:

Staff recommends a cooperative purchase of five (5) Patrol Services vehicles for the Police Department through Sourcewell Contract 091521-NAF from National Auto Fleet Group. Cooperative purchasing through the Sourcewell Contract is specifically authorized pursuant to Municipal Code Section I-2-3.05 “Public Agency Purchases”. The Purchasing Agent reviewed all of the documentation from the Sourcewell Contract No. 091521-NAF and has determined that the underlying purchase was made using competitive bidding procedures. Contract No. 091521-NAF is currently valid through November 8, 2025. All Sourcewell contracts provide nationally bid volume pricing to member cities not otherwise available for a single purchase. The purchase will be completed by issuing a purchase order with the City’s standard terms and conditions for materials and equipment.

The purchase of the five (5) police patrol vehicles in the amount of \$297,573.91 will be made through the National Auto Fleet Group funded through the Equipment Fund (\$198,016) and from the Police Department operating budget (\$66,139), which was appropriated as part of the approval of the FY2022-23 Adopted Budget. The amount of the purchase that exceeds the appropriated funds, \$33,418.91, will be absorbed by the Police Department FY2022-23 Adopted Operating Budget.

POLICY ALTERNATIVE(S):

Alternative 1: Purchase vehicles using a request for proposal (RFP)

Pros: An RFP allows the City to test the market for pricing.

Cons: Alternatively, a cooperative purchase allows for economies of scale by bringing together multiple organizations and their purchasing requirements, allow for more buying and negotiating power, and enables the City to obtain a better commercial deal than through a City RFP process.

Reason for Not Recommending: Pricing under the cooperative procurement has already been negotiated under an RFP and reviewed by the Purchasing Agent as the best option for the City. Additionally, the acquisition would be delayed if the City issues its own solicitation.

FISCAL IMPACT:

The total cost for the purchase of the five (5) Patrol Services vehicles under the cooperative procurement contract is \$297,573.91. The equipment replacement fund allocation is \$198,016 and the general fund allocation is \$66,139. The difference between the total cost for the purchase and the equipment replacement fund allocation in the amount of \$33,418.91 is available in the Police Department's FY 2022-23 operating budget.

California Environmental Quality Act (CEQA):

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

RECOMMENDATION:

Adopt a Resolution Authorizing the City Manager to Issue a Purchase Order in the amount of \$297,573.91 for the Purchase of Five Police Vehicles from the National Auto Fleet Group through a Cooperative Procurement Contract with Sourcewell.

Attachment(s):

1. National Auto Fleet Group Quote
2. Resolution



National Auto Fleet Group

A Division of Chevrolet of Watsonville

490 Auto Center Drive, Watsonville, CA 95076
 (855) 289-6572 • (855) BUY-NJPA • (831) 480-8497 Fax
 Fleet@NationalAutoFleetGroup.com

Quote ID 0823 R2

November 18, 2022

Ms. Lisa Beaulieu
 City of Milpitas Police Department
 1275 N Milpitas Blvd
 Milpitas, Ca 95035
 Delivery Via Email

Dear Ms. Beaulieu,

In response to your inquiry, we are pleased to submit the following for your consideration:

National Auto Fleet Group will sell, service and deliver at Milpitas, new/unused 2023 Ford Police Interceptor Ecco Boost Engine AWD Patrol responding to your requirement with the attached specifications for \$ 52,992.00 plus State Sales Tax, and \$8.75 tire tax (non-taxable). These vehicles are available under the Sourcewell (Formerly Known as NJPA) master vehicle contract# 091521-NAF. **UNIT TO BE ALL BLACK**

	One unit MSRP	Selling Price	Total Savings	Extended units (5)	Total Savings
2023 Ford Police Interceptor Utility W/Ecco Boost Engine and Ballistics	56,570.00	52,992.00	6.32%	264,960.00	17,890.00
PB400 Push Bumper		875.00		4,375.00	
Sub Total		53,867.00		269,335.00	
Sales Tax		5,050.03		25,250.16	
Tire Tax		8.75		43.75	
Transport		589.00		2,945.00	
Total		59,514.78		297,573.91	

Terms are net 30 days.

Delivery 90-120 Days ARO

National Auto Fleet Group welcomes the opportunity to assist you in your vehicle requirements.

Kevin Buzzard
 National Law Enforcement Sales Manager
 National Auto Fleet Group
 Wondries Fleet Group
 626-457-5590 O / 714-264-1867 C



Vehicle: [Fleet] 2023 Ford Police Interceptor Utility (K8A) AWD



National Auto Fleet Group

Prepared By:

Kevin Buzzard
National Auto Fleet Group
626-457-5590 OFC
Buzzard5150@gmail.com

Vehicle: [Fleet] 2023 Ford Police Interceptor Utility (K8A) AWD (✓ Complete)

Selected Model and Options

MODEL

CODE	MODEL
K8A	2023 Ford Police Interceptor Utility AWD

COLORS

CODE	DESCRIPTION
UM	Agate Black

ENGINE

CODE	DESCRIPTION
99C	Engine: 3.0L V6 EcoBoost -inc: (148-MPH top speed), Note: Deletes regenerative braking and lithium-ion battery pack; adds 250-Amp alternator, replaces H7 AGM battery (800 CCA/80-amp) w/H7 SLI battery (730 CCA/80-amp) and replaces 19-gallon tank w/21.4-gallon, 3.31 Axle Ratio

TRANSMISSION

CODE	DESCRIPTION
44U	Transmission: 10-Speed Automatic (44U)

OPTION PACKAGE

CODE	DESCRIPTION
500A	Order Code 500A

AXLE RATIO

CODE	DESCRIPTION
—	3.31 Axle Ratio

PRIMARY PAINT

CODE	DESCRIPTION
UM	Agate Black

SEAT TYPE

CODE	DESCRIPTION
96	Charcoal Black, Unique HD Cloth Front Bucket Seats w/Vinyl Rear -inc: reduced bolsters, driver 6-way power track (fore/aft, up/down, tilt w/manual recline, 2-way manual lumbar), passenger 2-way manual track (fore/aft, w/manual recline) and built-in steel intrusion plates in both driver/passenger seatbacks

Prices, specifications, and availability are subject to change without notice, and do not include certain fees, taxes and charges that may be required by law or vary by manufacturer or region. Performance figures are guidelines only, and actual performance may vary. Photos may not represent actual vehicles or exact configurations. Content based on report preparer's input is subject to the accuracy of the input provided. Data Version: 17970, Data updated Nov 17, 2022 6:49:00 PM PST

Vehicle: [Fleet] 2023 Ford Police Interceptor Utility (K8A) AWD ( Complete)**ADDITIONAL EQUIPMENT - MECHANICAL**

CODE	DESCRIPTION
47A	Police Engine Idle Feature -inc: This feature allows you to leave the engine running and prevents your vehicle from unauthorized use when outside of your vehicle, Allows the key to be removed from ignition while vehicle remains idling
19K	H8 AGM Battery (850 CCA/92-amp)
76D	Underbody Deflector Plate -inc: Engine and transmission shield

ADDITIONAL EQUIPMENT - EXTERIOR

CODE	DESCRIPTION
51S	Dual (Driver & Passenger) LED Spot Lamps (Unity)
90E	Ballistic Door-Panels (Level III+) -inc: Driver and passenger front-doors
86T	Tail Lamp/Police Interceptor Housing Only -inc: Pre-existing holes w/standard twist lock sealed capability (does not include LED strobe) (eliminates need to drill housing assemblies)
59F	Keyed Alike - 0576x

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Vehicle: [Fleet] 2023 Ford Police Interceptor Utility (K8A) AWD (✔ Complete)

ADDITIONAL EQUIPMENT - INTERIOR

CODE	DESCRIPTION
52P	Hidden Door-Lock Plunger -inc: rear-door controls inoperable (locks, handles and windows), Note: Can manually remove window or door disable plate w/special tool, Note: Locks/windows operable from driver's door switches
17A	Rear Auxiliary Air Conditioning
19V	Rear Camera On-Demand -inc: Allows driver to enable rear camera on-demand
43D	Dark Car Feature -inc: Courtesy lamps disabled when any door is opened
17T	Switchable Red/White Lighting in Cargo Area -inc: Deletes 3rd row overhead map light
87R	Rear View Camera -inc: Displayed in rear view mirror, Note: This option replaces the standard display in the center stack area, Note: Camera can only be displayed in the center stack (std) or the rear view mirror (87R), Electrochromic Rear View Mirror, Video is displayed in rear view mirror
55B	BLIS Blind Spot Monitoring w/Cross Traffic Alert -inc: Manual Fold-Away Mirrors w/Heat, Without memory and without puddle lamps
76P	Pre-Collision Assist w/Pedestrian Detection -inc: forward collision warning and Automatic Emergency Braking and unique one-touch temporary disable switch for law enforcement use
76R	Reverse Sensing System
61B	OBD-II Split Connector -inc: Allows up to 2 devices to be connected to the vehicle's OBD-II port
67V	Front & Rear Police Wire Harness Connector Kit -inc: For connectivity to Ford PI Package solutions includes front (2) male 4-pin connectors for siren, (5) female 4-pin connectors for lighting/siren/speaker, (1) 4-pin IP connector for speakers, (1) 4-pin IP connector for siren controller connectivity, (1) 8-pin sealed connector, (1) 14-pin IP connector, rear (2) male 4-pin connectors for siren, (5) female 4-pin connectors for lighting/siren/speaker, (1) 4-pin IP connector for speakers, (1) 4-pin IP connector for siren controller connectivity, (1) 8-pin sealed connector and (1) 14-pin IP connector
60A	Grille LED Lights, Siren & Speaker Pre-Wiring
85R	Rear Console Plate -inc: Contours through 2nd row; channel for wiring
Options Total	

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Vehicle: [Fleet] 2023 Ford Police Interceptor Utility (K8A) AWD (✓ Complete)

Standard Equipment

Mechanical

Engine: 3.3L V6 Direct-Injection Hybrid System -inc: (136-MPH top speed) (STD)

Transmission: 10-Speed Automatic (STD)

3.73 Axle Ratio (STD)

50 State Emission System Flexible Fuel Vehicle (FFV) system is standard equipment for vehicles equipped with the 3.3L V6 Direct-Injection engine.

Transmission w/Oil Cooler

Automatic Full-Time All-Wheel

Engine Oil Cooler

80-Amp/Hr 800CCA Maintenance-Free Battery

Hybrid Electric Motor 220 Amp Alternator

Class III Towing Equipment -inc: Hitch

Trailer Wiring Harness

Police/Fire

1670# Maximum Payload

GVWR: 6,840 lbs (3,103 kgs)

Gas-Pressurized Shock Absorbers

Front And Rear Anti-Roll Bars

Electric Power-Assist Steering

19 Gal. Fuel Tank

Dual Stainless Steel Exhaust

Permanent Locking Hubs

Strut Front Suspension w/Coil Springs

Multi-Link Rear Suspension w/Coil Springs

Regenerative 4-Wheel Disc Brakes w/4-Wheel ABS, Front And Rear Vented Discs, Brake Assist and Hill Hold Control

Lithium Ion Traction Battery

Exterior

Wheels: 18" x 8" 5-Spoke Painted Black Steel -inc: polished stainless steel hub cover and center caps

Tires: 255/60R18 AS BSW

Steel Spare Wheel

Spare Tire Mounted Inside Under Cargo

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Vehicle: [Fleet] 2023 Ford Police Interceptor Utility (K8A) AWD (✔ Complete)

Exterior

Clearcoat Paint

Body-Colored Front Bumper w/Black Rub Strip/Fascia Accent and 1 Tow Hook

Body-Colored Rear Bumper w/Black Rub Strip/Fascia Accent

Body-Colored Bodyside Cladding and Black Wheel Well Trim

Black Side Windows Trim and Black Front Windshield Trim

Black Door Handles

Black Power Side Mirrors w/Convex Spotter and Manual Folding

Fixed Rear Window w/Fixed Interval Wiper, Heated Wiper Park and Defroster

Deep Tinted Glass

Speed Sensitive Variable Intermittent Wipers

Galvanized Steel/Aluminum Panels

Lip Spoiler

Black Grille

Liftgate Rear Cargo Access

Tailgate/Rear Door Lock Included w/Power Door Locks

Auto On/Off Projector Beam Led Low/High Beam Headlamps

LED Brakelights

Entertainment

Radio w/Seek-Scan, Speed Compensated Volume Control and Steering Wheel Controls

Radio: AM/FM/MP3 Capable -inc: clock, 4-speakers, Bluetooth interface w/hands-free voice command support (compatible w/most Bluetooth connected mobile devices), 1 USB port and 4.2" color LCD screen center stack smart display

Integrated Roof Antenna

1 LCD Monitor In The Front

Interior

8-Way Driver Seat

Passenger Seat

35-30-35 Folding Split-Bench Front Facing Fold Forward Seatback Rear Seat

Manual Tilt/Telescoping Steering Column

Gauges -inc: Speedometer, Odometer, Engine Coolant Temp, Tachometer, Engine Hour Meter, Traction Battery Level, Trip Odometer and Trip Computer

Power Rear Windows and Fixed 3rd Row Windows

Fleet Telematics Modem Selective Service Internet Access

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Vehicle: [Fleet] 2023 Ford Police Interceptor Utility (K8A) AWD (✓ Complete)

Interior

Remote Releases -Inc: Power Cargo Access

Cruise Control w/Steering Wheel Controls

Dual Zone Front Automatic Air Conditioning

HVAC -inc: Underseat Ducts

Locking Glove Box

Driver Foot Rest

Unique HD Cloth Front Bucket Seats w/Vinyl Rear -inc: reduced bolsters, driver 6-way power track (fore/aft, up/down, tilt w/manual recline, 2-way manual lumbar), passenger 2-way manual track (fore/aft, w/manual recline) and built-in steel intrusion plates in both driver/passenger seatbacks

Interior Trim -inc: Metal-Look Instrument Panel Insert, Metal-Look Door Panel Insert and Metal-Look Interior Accents

Full Cloth Headliner

Urethane Gear Shifter Material

Day-Night Rearview Mirror

Driver And Passenger Visor Vanity Mirrors

Mini Overhead Console w/Storage and 2 12V DC Power Outlets

Front And Rear Map Lights

Fade-To-Off Interior Lighting

Full Vinyl/Rubber Floor Covering

Carpet Floor Trim

Cargo Features -inc: Cargo Tray/Organizer

Cargo Space Lights

Dashboard Storage, Driver And Passenger Door Bins

Power 1st Row Windows w/Driver And Passenger 1-Touch Up/Down

Delayed Accessory Power

Power Door Locks

Systems Monitor

Redundant Digital Speedometer

Trip Computer

Analog Appearance

Seats w/Vinyl Back Material

Manual Adjustable Front Head Restraints and Manual Adjustable Rear Head Restraints

2 12V DC Power Outlets

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Vehicle: [Fleet] 2023 Ford Police Interceptor Utility (K8A) AWD (✔ Complete)

Interior

Air Filtration

Safety-Mechanical

Electronic Stability Control (ESC) And Roll Stability Control (RSC)

ABS And Driveline Traction Control

Safety-Exterior

Side Impact Beams

Safety-Interior

Dual Stage Driver And Passenger Seat-Mounted Side Airbags

Tire Specific Low Tire Pressure Warning

Dual Stage Driver And Passenger Front Airbags

Curtain 1st And 2nd Row Airbags

Airbag Occupancy Sensor

Passenger Knee Airbag

Rear Child Safety Locks

Outboard Front Lap And Shoulder Safety Belts -inc: Rear Center 3 Point, Height Adjusters and Pretensioners

Back-Up Camera w/Washer

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Vehicle: [Fleet] 2023 Ford Police Interceptor Utility (K8A) AWD ( Complete)

Window Sticker

SUMMARY

[Fleet] 2023 Ford Police Interceptor Utility (K8A) AWD

MSRP:\$47,165.00

Interior:Charcoal Black, Unique HD Cloth Front Bucket Seats w/Vinyl Rear

Exterior 1:Agate Black

Exterior 2:No color has been selected.

Engine: 3.0L V6 EcoBoost

Transmission: 10-Speed Automatic (44U)

OPTIONS

CODE	MODEL	MSRP
K8A	[Fleet] 2023 Ford Police Interceptor Utility (K8A) AWD	\$47,165.00
OPTIONS		
17A	Rear Auxiliary Air Conditioning	\$610.00
17T	Switchable Red/White Lighting in Cargo Area	\$50.00
19K	H8 AGM Battery (850 CCA/92-amp)	\$110.00
19V	Rear Camera On-Demand	\$230.00
43D	Dark Car Feature	\$25.00
44U	Transmission: 10-Speed Automatic (44U)	\$0.00
47A	Police Engine Idle Feature	\$260.00
500A	Order Code 500A	\$0.00
51S	Dual (Driver & Passenger) LED Spot Lamps (Unity)	\$620.00
52P	Hidden Door-Lock Plunger	\$160.00
55B	BLIS Blind Spot Monitoring w/Cross Traffic Alert	\$545.00
59F	Keyed Alike - 0576x	\$50.00
60A	Grille LED Lights, Siren & Speaker Pre-Wiring	\$50.00
61B	OBD-II Split Connector	\$55.00
67V	Front & Rear Police Wire Harness Connector Kit	\$185.00
76D	Underbody Deflector Plate	\$335.00
76P	Pre-Collision Assist w/Pedestrian Detection	\$145.00
76R	Reverse Sensing System	\$275.00
85R	Rear Console Plate	\$45.00
86T	Tail Lamp/Police Interceptor Housing Only	\$60.00

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Vehicle: [Fleet] 2023 Ford Police Interceptor Utility (K8A) AWD (✓ Complete)

87R	Rear View Camera	\$0.00
90E	Ballistic Door-Panels (Level III+)	\$3,170.00
96	Charcoal Black, Unique HD Cloth Front Bucket Seats w/Vinyl Rear	\$0.00
99C	Engine: 3.0L V6 EcoBoost	\$950.00
UM	Agate Black	\$0.00
—	3.31 Axle Ratio	Inc.
SUBTOTAL		\$55,095.00
Adjustments Total		\$0.00
Destination Charge		\$1,495.00
TOTAL PRICE		\$56,590.00

FUEL ECONOMY

Est City:N/A

Est Highway:N/A

Est Highway Cruising Range:N/A

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RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS
AUTHORIZING THE CITY MANAGER TO EXECUTE THE PURCHASE OF
FIVE POLICE VEHICLES THROUGH A SOURCEWELL COOPERATIVE
PROCUREMENT CONTRACT WITH THE NATIONAL AUTO FLEET GROUP**

WHEREAS, Municipal Code Section I-2-3.05 (“Public Agency Purchase”) specifically authorizes the Purchasing Agent to purchase supplies or services without complying with the quotation or bidding requirements of that Chapter, and to make such purchases based on an agreement or cooperative purchasing program utilizing public agency procurements as the basis for the contract and may be offered by any ‘public agency’ as defined by Government Code Section 6500, regardless of whether the City is named a party to the agreement or an actual participant in such a program, provided that the underlying purchase was made using competitive negotiation or procurement procedures and may include a nationally bid cooperative contract; and

WHEREAS, Sourcewell is a State of Minnesota local government unit and service cooperative created under the laws of the State of Minnesota through legislative authority of Minnesota Statute 123A.21.Feb 24, 2017 that offers cooperative procurement solutions to government entities; and

WHEREAS, on July 28, 2021 Sourcewell solicited Request for Proposal (RFP) No. 091521 for “Automobiles, SUVs, Vans, and Light Trucks with Related Equipment and Accessories”; and

WHEREAS, on November 4, 2021 contract No. 091521-NFA was awarded to National Auto Fleet Group and took effect pursuant to the aforementioned RFP; and

WHEREAS, to support the Police Department vehicle replacement, staff wishes to purchase five 2023 Ford Police Interceptor Utility SUVs for \$297,573.91; and

WHEREAS, the Purchasing Agent has reviewed all of the documentation related to the RFP and the original contract awarded to National Auto Fleet Group and has determined that the underlying purchase was made using competitive bidding procedures and that the price for the vehicles are the same as that offered in the original contract.

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

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Manager is authorized to execute the purchase five 2023 Ford Police Interceptor Utility SUVs for \$297,573.91. This is a cooperative purchase from National Auto Fleet Group through the Sourcewell Cooperative.

PASSED AND ADOPTED this _____ day of _____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta, City Clerk

Carmen Montano, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi, City Attorney



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution Authorizing the City Manager to Execute the Five-Year Sole Source Agreement with Hadronex, Inc. Doing Business as SmartCover Systems for Alert System Services Related to the Deployment of SmartLevel Sewer Monitoring System Units for a Not-to-Exceed Amount of \$209,835.85, Subject to the Annual Appropriation of Funds (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602)
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	12/20/2022
	<u>Recommendation:</u> Adopt a resolution authorizing the City Manager to execute the five-year sole source agreement with Hadronex, Inc. doing business as SmartCovers Systems for alert system services related to the deployment of SmartLevel Sewer Monitoring System units for the not-to-exceed amount of \$209,835.85, subject to the annual appropriation of funds and approval as to form by the City Attorney, and find a CEQA exemption.

BACKGROUND:

All public wastewater collection system agencies in the San Francisco Bay Region are required to: a) take a proactive approach to system-wide operation, maintenance, and management; b) improve the condition of the collection infrastructure; and c) preserve the integrity of the system and provide reliable service to minimize the frequency and impacts of sanitary sewer overflows (SSOs). A sanitary sewer overflow is a spill, release, or unauthorized discharge of wastewater from a sanitary sewer system. SSOs may result from issues such as a blockage in a sewer system line, which impedes the flow of wastewater resulting in overflow at upstream manholes. SSOs release raw sewage and other contaminants that may pollute surface or ground water, threaten property and public health, damage the environment and adversely affect aquatic life and the waters of the State.

In FY 2017-18, Council approved the Sanitary Sewer Overflow (SSO) Improvements Project (CIP No. 6123), to implement a pilot program for “smart” manhole covers, to prevent SSOs. As part of the pilot program, the City engaged SmartCover Systems to provide a risk analysis of the City’s sanitary sewer system and subsequently develop a list of locations where SSOs have a higher likelihood of occurring in the system. The SmartCover Systems manhole covers use a web-based technology that provides real-time remote sewer overflow monitoring via a satellite communications system. The units are installed on the underside of existing manhole covers and provide real-time monitoring of sewage levels in manholes. Alarms on the units are transmitted via email and/or text and can warn of potential SSO events, allowing staff to immediately dispatch to locations of concern to reduce the likelihood of spills, improving sanitary sewer overflow response times, and increasing protection to the health and safety of the public and the environment.

The City has purchased and installed 35 SmartCover devices at strategic manhole locations adjacent to water bodies and creeks to prevent contaminants from entering nearby waterways in the event of a sanitary sewer overflow. There have been no SSOs at installed SmartCover device locations since they were installed.

ANALYSIS:

SmartCover Systems is a sole source provider for this product, including the SmartLevel monitoring system which provides continuous monitoring capability for levels and flow data in the sewer collection system. These products are patented and proprietary and designed and manufactured by Hadronex, Inc. Professional services are solely provided by SmartCover Systems for the management and security of data, software maintenance, upgrades, user website interface and communication systems.

On September 4, 2018, the City Council approved a Sole Source request pursuant to Milpitas Municipal Code Title 1, Chapter 2-3.09 - Sole Source Procurement based on the proprietary design and alert system of the SmartLevel Sewer Monitoring System agreement with Hadronex, Inc. for the purchase, installation, and five years of alert system services related to the deployment of SmartLevel sewer monitoring system units. Usage of SmartCovers has helped to keep the City in compliance with increasingly strict State mandates regarding the Sanitary Sewer Management Program.

Due to the specialized nature of these devices, it is necessary for the City to have a binding agreement with the manufacturer to not only provide continuous, uninterrupted satellite communication service but also to safeguard proper operation of the Smart Cover units.

POLICY ALTERNATIVE(S):

Alternative 1: Do not approve the agreement Hydronex, Inc

Pros: None.

Cons: The City will not receive real-time alerts of potential SSO events and response times for sanitary sewer overflow will increase.

Reason for Not Recommending: SmartCovers has helped to keep the City in compliance with increasingly strict State mandates regarding the Sanitary Sewer Management Program.

FISCAL IMPACT:

The fiscal impact for FY 2022-23 will be \$37,975. Sufficient funds are available in the Public Works Operating Budget for FY 2022-23. Ongoing renewal costs are subject to the annual appropriation of funds.

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 as this action has no potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

RECOMMENDATION:

Adopt a resolution authorizing the City Manager to execute the five-year agreement with Hadronex, Inc. doing business as SmartCovers Systems for alert system services related to the deployment of SmartLevel Sewer Monitoring System units for the not-to-exceed amount of \$209,835.85, subject to the annual appropriation of funds and approval as to form by the City Attorney.

Attachment(s):

2. Original Sole Source
3. Resolution



Sole Source – Exclusive Manufacturer & Distributor City of Milpitas

City of Milpitas
455 E Calaveras Blvd
Milpitas, CA 95035

July 16, 2018

This letter is to provide notification that Hadronex, Inc. (doing business as SmartCover® Systems™) herein known as "Company" with corporate offices located at 2067 Wineridge Place, Suite E, Escondido, CA 92029, is the sole creator, manufacturer, marketer, and distributor of a group of systems and products, including: the award winning *SmartCover®*; *SmartFLOE™*; *SmartVault*; *SmartWeir™*; *SmartClean™*; *SmartTank™*; *SmartTrend®*; *SmartRain™*; *SmartTide™*; *H₂Scents™* and *StreamWatch™*.

The *SmartCover®* family of products are both **patented and proprietary**, designed and manufactured by Company to provide users with unique qualities and functions based on acquiring water level and/or flow data in the sewer collection system or other structures with open channel flows, using ultrasonic technology combined with embedded analytics and data fusion. The *SmartCover®* system, which acquires and transmits data through the Iridium® military grade satellite network, is immune to terrestrial communications interruptions caused by storms or hurricanes and provides 24/7 user access via a secure web browser and through a dedicated, secure user website.

SmartCover® uniquely provides real-time, continuous monitoring capability powered by an engineered and proprietary long-life lithium thionyl chloride battery pack. It *uniquely* communicates with an embedded digital radio through the Iridium® Satellite System assuring global, redundant and continuous coverage.

Users acquire trend data via the patented and proprietary *SmartTrend™* analysis software tool which issues predictive "Advisories" on developing trends, "Alarms" for surcharges and intrusions and maintenance "Alerts" that monitor specific operational parameters system. All notifications provide information and resources enabling Sewer Intelligence® - effective, informed decision-making for corrective or preemptive action.

All systems are enabled to accept local rain, stream or tidal data via the patent pending *SmartRain™*; *StreamWatch™* and *SmartTide™* data services where users are presented a "multigraph view" for fast and easy comparison of the *SmartCover* (level) or *SmartFLOE* (flow) data with local environmental data. *SmartClean™* provides advanced maintenance forecasting to reduce cost and risk.

Mounted directly on the manhole cover, the patented *SmartCover®* configuration is designed to be installed with **no confined space entry** per OSHA CFR 1910.146(b). The manhole cover mounting also provides a real-time intrusion alarm when the manhole cover is opened, providing a unique capability to detect illegal intrusions or entries into the manhole or hatch.

Company *solely* provides ongoing professional services for management and security of data, software maintenance and upgrades, the user website interface and exercise of the Iridium Satellite communications system. These essential services directly enable users to have seamless, robust and ongoing access to real-time data from remote locations.

Company systems are protected by the following US Patents: 7,292,143; 7,589,630; 7,598,858; 7,944,352; 7,948,215; 8,607,654; 9,297,684; and 9,482,568. The systems are also protected by registered trademarks and international patents. Company also has a Madrid Treaty filing for its main trademark. We hope this information will satisfy your requirements and that it clearly demonstrates the special, patented, unique and proprietary features of our systems.

Sincerely,

Greg Quist, Ph.D.
CEO, SmartCover Systems
gquist@smartcoversystems.com



CITY OF MILPITAS SOLE SOURCE/BRAND REQUEST

THIS FORM MUST BE COMPLETED AND APPROVED PRIOR TO ANY PROCUREMENT

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

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

Brand Name:	Hadronex, Inc. (doing business as SmartCover Systems)
Model Number:	SmartLevel Monitoring System Components • SC-S-S-15 E-Box System Control, Distance Sensing Module, PowerPack, E-Dot antenna, mounting bracket kit. • PowerPack Warranty • Parts Warranty • ASM-SC1 Active Site Management, SmartLevel, One-Year (Comprehensive support services) • ASM-RD-1Y: SmartRain, One-Year, per site (Radar rain data) • Installation & Certification
Product(s):	SmartLevel is a pre-active monitoring system, providing two way wireless communications, real-time continuous remote sensing and alarms, web base interface, long and short term data collection and analysis which will result in proactive measures to reduce and prevent sanitary sewer overflows.

Year 1 Cost: \$124,667.60
Years 2-5: \$43,680.00
Total: \$168,347.60

2. Please check one:

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

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

b) ☐ SOLE BRAND: Various sources can supply the specified model and brand; competitive bids will be solicited for the requested brand only. Meets form, fit and function - nothing else will do.

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

3. What are the unique performance features of the product/brand requested that are not available in any other product/brand? (For services: What unique qualifications, rights, degrees, certifications, licenses and/or experience does this vendor possess?)

Hadronex, Inc. is the sole creator, manufacturer, marketer, and distributor of the SmartLevel Monitoring System. The products are both patented and proprietary, and designed and manufactured by the Company. The SmartCover® system is immune to terrestrial communications interruptions caused by storms or hurricanes and provides 24/7 user access via a secure web browser and through a dedicated, secure user website. SmartCover® uniquely provides real-time, continuous monitoring capability powered by an engineered and proprietary long-life lithium thionyl chloride battery pack. It uniquely communicates with an embedded digital radio through the Iridium® Satellite System assuring global, redundant and continuous coverage.

4. What other products/services have been examined and rejected, and why? *(Please provide a specific meaningful explanation, one vendor and one feature at a time. For products be sure to clearly identify the product by name and model number and include the name, address, and telephone number of the company representative who's product you tested.)*

Hadronex, Inc (doing business as SmartCover) is the sole creator, manufacturer, marketer, and distributor of this kind of sewer monitoring system.

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

The City completed a pilot program using these units. There are ongoing professional services SmartCover® provides that Public Works Maintenance Operations uses, and would like to continue using the same management provider.

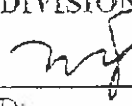
I HEREBY CERTIFY THAT:

1. I am an approved department representative, and am aware of the City's requirements for competitive bidding, as well as the criteria for justification for sole source/brand procurements.
2. I have gathered the required technical information and have made a concentrated effort to review comparable and/or equal equipment/service.
3. There is validity as to the information contained herein justifying my request for sole source/brand procurement and meeting the City's criteria.
4. A sole source/brand procurement in this case would withstand a possible audit or a vendor's protest.

REQUESTOR Tony Ndah DATE: 8/8/2018

DEPT./DIV. HEAD: Tony Ndah DATE: 8/8/2018

PURCHASING DIVISION USE ONLY:

APPROVED: 
NOT APPROVED: _____

PURCHASING AGENT:
DATE: 8/29/18

COMMENTS:

RESOLUTION NO. [REDACTED]

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING THE
SOLE SOURCE AGREEMENT WITH HADRONEX, INC. FOR ALERT SYSTEM SERVICES
RELATED TO THE DEPLOYMENT OF SMARTLEVEL SEWER MONITORING SYSTEM
UNITS FOR A NOT-TO-EXCEED AMOUNT OF \$209,835.85**

WHEREAS, Section 1-2-3.06 of the Milpitas Municipal Code authorizes the City Council to award contracts without competition when the Purchasing Agent determines that there is only one source for the required supply or service; and

WHEREAS, Hadronex, Inc., doing business as SmartCover Systems, is the creator, manufacturer, and marketer of systems and products, including SmartCover, SmartFLOE, SmartVault, SmartWeir, SmartClean, SmartTank, SmartTrend, SmartRain, SmartTide, and StreamWatch; and

WHEREAS, the SmartCover family of products are both patented and proprietary systems, designed and manufactured by Hadronex, Inc. to provide users with unique qualities and functions based on acquiring water level and/or flow data in the sewer collection system or other structures with open channel flows, using ultrasonic technology combined with embedded analytics and data fusion; and

WHEREAS, SmartLevel Monitoring System is a pro-active monitoring system, providing two-way wireless communications, real-time continuous remote sensing and alarms, web base interface, long and short-term data collection and analysis which results in proactive measures to reduce and prevent sanitary sewer overflows; and

WHEREAS, the Public Works Department has researched alternative products and has come to the conclusion that the SmartCover System is the only system of its kind and is the best value over the other possible options. After conducting a good faith review of the available sources and pursuant to Milpitas Municipal Section 1-2-3.09, the City's Purchasing Agent has determined that Hadronex, Inc., is the only sewer monitoring system that meets the City's requirements; and

WHEREAS, the City has purchased and installed 35 SmartCover devices at strategic manhole locations adjacent to water bodies and creeks to prevent contaminants from entering nearby waterways in the event of a sanitary sewer overflow; and

WHEREAS, the execution of the five-year sole source agreement with Hadronex, Inc. for alert system services related to the deployment of SmartLevel Sewer Monitoring System units for the not-to-exceed amount of \$209,835.85 will provide continuous, uninterrupted satellite communication service and safeguard proper operation of the Smart Cover units deployed throughout the City.

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

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

2. The City Council does hereby approve the sole source agreement with Hadronex, Inc. related to the deployment of SmartLevel Sewer Monitoring System Units for a not-to-exceed amount of \$209,835.85 subject to approval as to form by the City Attorney.

PASSED AND ADOPTED this _____ day of _____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta, City Clerk

Carmen Montano, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi, City Attorney



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Accept a State of California Parks and Recreation grant in the amount of \$224,543.00 for Sunnyhills Albert Augustine Jr. Memorial Park and Appropriate the Funds to CIP No. 3500 (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409)
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	12/20/2022
	<u>Recommendation:</u> Accept a State of California Parks grant in the amount of \$224,543.00 for Sunnyhills Albert Augustine Jr. Memorial Park and appropriate the funds to CIP No. 3500 and find all potential significant effects sufficiently analyzed by the December 14, 2021 Negative Declaration.

BACKGROUND:

The California Department of Parks and Recreation Office of Grants and Local Services (OGAL) strives to address California's diverse recreational, cultural and historical resource needs by developing grant programs, administering funds, offering technical assistance, building partnerships and providing leadership through quality customer service. The OGAL Per Capita Program originates from Proposition 68 and was placed on the ballot via Senate Bill 5 and was approved by voters on June 5, 2018. Funds are available for local park rehabilitation, creation, and improvement grants to local governments on a per capita basis. Grant recipients are encouraged to utilize awards to rehabilitate existing infrastructure and to address deficiencies in neighborhoods lacking access to the outdoors.

On April 5, 2022, the City Council adopted a Resolution approving the application for \$224,543 Per Capita Grant Funds from the State Department of Parks and Recreation. Per the allocation formula, the City received the aforementioned grant amount.

On December 6, 2022, the City Council awarded a construction contract to G&G Builders Inc. in the amount of \$872,059.00 for the rehabilitation of up to eleven City Parks project, which included the Sunnyhills Albert Augustine Jr. Memorial Park, and authorized the City Manager to negotiate and execute contract change order(s) in an aggregate amount not to exceed \$468,514.00 subject to appropriation of OGAL grant funds.

Analysis:

Per the OGAL Per Capita Program (Program), eligible projects must be capital outlay for recreational purposes, either acquisition or development, and can only have one location. Projects not serving a "severely disadvantaged community" which is defined by the Program as median households whose income is less than 60% of the statewide average, require a 20% match. Grantees must use the grant funds to supplement existing project expenditures, not replace them.

Considering the Program project eligibility and matching requirements for severely disadvantaged communities, staff submitted a project application for Sunnyhills Albert Augustine Jr. Memorial Park. This action appropriates the funds to the CIP Project titled ARPA Park Rehabilitation – DPW (CIP No. 3500).

FISCAL IMPACT:

Appropriate \$224,543 to ARPA Park Rehabilitation – DPW CIP No. 3500. Funding source of \$224,543 comes from State Contributions – Recreation. As of 12/13/2022, the balance in CIP 3500 is \$1,116,000.

California Environmental Quality Act (CEQA):

In accordance with CEQA Guidelines Section 15371, the Milpitas City Council adopted an Initial Study/Negative Declaration (IS/ND) on December 14, 2021, in conjunction with adoption of the Milpitas Parks and Recreation Master Plan. The IS/ND analyzed all potentially significant effects for projects consistent with the Master Plan, and no further action is necessary under CEQA.

RECOMMENDATION:

Accept a State of California Parks and Recreation grant in the amount of \$224,543 for Sunnyhills Albert Augustine Jr. Memorial Park and appropriate the funds to CIP No. 3500 and find all potential significant effects sufficiently analyzed by the December 14, 2021 Negative Declaration.

Attachment(s):

Budget Change Form

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From*		To*	
	Account	Amount	Account	Amount
Check one: ☐ Budget Appropriation ☐ Budget Transfer	331-9513500153566	\$224,543	331-951350074800	\$224,543

Accept a State of California Parks grant in the amount of \$224,543 for Sunnyhills Augustine Park and Appropriate the Funds to CIP No. 3500.

Background:

The California Department of Parks and Recreation Office of Grants and Local Services (OGAL) strives to address California's diverse recreational, cultural and historical resource needs by developing grant programs, administering funds, offering technical assistance, building partnerships and providing leadership through quality customer service. The OGAL Per Capita Program originates from Proposition 68 and was placed on the ballot via Senate Bill 5 and was approved by voters on June 5, 2018. Funds are available for local park rehabilitation, creation, and improvement grants to local governments on a per capita basis. Grant recipients are encouraged to utilize awards to rehabilitate existing infrastructure and to address deficiencies in neighborhoods lacking access to the outdoors.

\$224,543 in grant funds are available and earmarked for the City of Milpitas, thus City staff applied for these grant funds to support repairs and improvements to the City of Milpitas' parks system.

Analysis:

Per the OGAL Per Capita Program (Program), eligible projects must be capital outlay for recreational purposes, either acquisition or development, and can only have one location. Projects not serving a "severely disadvantaged community" which is defined by the Program as median households whose income is less than 60% of the statewide average, require a 20% match. Grantees must use the grant funds to supplement existing project expenditures, not replace them.

Considering the Program project eligibility and matching requirements for severely disadvantaged communities, staff submitted a project application for Sunnyhills Augustine Park.

Per the OGAL Per Capita Program process, a Resolution approving the filing of the application packet is was approved by City Council on April 5, 2022. Funding for playground repairs and improvements to Sunnyhills Augustine Park were approved by City Council on December 6, 2022, as part of the APRA Park Rehabilitation – DPW, CIP No. 3500. This project(s) is consistent with the grantee's Parks and Recreation Master Plan.

Policy Alternatives:

N/A

Fiscal Impact:

Appropriate \$224,543 to ARPA Park Rehabilitation – DPW CIP No. 3500. Funding source of \$224,543 comes from State Contribution - Recreation. As of 12/13/2022, the balance in CIP 3500 is \$1,116,000.

California Environmental Quality Act:

The City Council's action in adopting this Resolution is exempt from environmental review pursuant to CEQA Guideline 15378(b)(4) as a governmental fiscal activity which does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment. Instead, if funding is provided, staff will look at the financial allocation and return to the City Council with a specific project or projects along with any required CEQA analysis prior to any discretionary action being taken.

Recommendation:

Accept a State of California Parks and Recreation grant in the amount of \$224,543 for Sunnyhills Augustine Park and Appropriate the Funds to CIP No. 3500.

Attachments:

1. Per Capita Grant Application
2. Budget Change Form

☐ Check if City Council Approval required.

Meeting Date: December 20, 2022

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