



## REGULAR MEETING OF THE MILPITAS CITY COUNCIL

### AGENDA

TUESDAY, MARCH 7, 2023

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

6:00 PM (CLOSED SESSION)

7:00 PM (PUBLIC BUSINESS)

For assistance in the following languages, you may call:

Đối với Việt Nam, gọi 408-586-2400

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.

***Councilmember Garry Barbadillo will participate remotely from:***

5329 Thunder Ridge Cir.  
Rocklin, CA 95765

Pursuant to California Government Code Section 54953

You may watch the Council meeting without providing public comment by accessing it via links here.

**Meeting shall be livestreamed - Go to:**

Facebook: <https://www.facebook.com/CityofMilpitas/>

YouTube: <https://www.milpitas.gov/youtube>

Web Streaming: <https://www.milpitas.gov/webstreaming>

---

### PUBLIC COMMENT INSTRUCTIONS

Oral public comments may be provided live during the City Council meeting in person or by registering for the zoom meeting in advance. To register you will need to provide an email address (not disclosed) and a name. To minimize technical difficulties, please make sure that you have the latest version of the Zoom Application. Below is the link to register for this meeting only:

[https://ci-milpitas-ca-gov.zoom.us/webinar/register/WN\\_jmTnUd7JTMWvMkWWfisPzg](https://ci-milpitas-ca-gov.zoom.us/webinar/register/WN_jmTnUd7JTMWvMkWWfisPzg)

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](mailto: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)

### **ADJOURN TO CLOSED SESSION**

#### **(a) CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

Significant Exposure to Litigation Pursuant to Government Code Section 54956.9(d)(2)

Facts and circumstances of a transactional occurrence related to fees charged for the use of sanitary sewer.

City as Defendant

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

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

City as Plaintiff

*County Sanitation District 2-3, et al. v. The City of San Jose, et al.* Santa Clara Superior Court case no. 18CV325480

### **CLOSED SESSION ANNOUNCEMENT:**

Report on action taken in Closed Session, if required per Government Code Section 54957.1, including the vote or abstention of each member present.

### **PLEDGE OF ALLEGIANCE** (Mayor Montano)

### **INVOCATION** (Councilmember Barbadillo)

### **PRESENTATIONS** (7:05 PM)

- American Red Cross Month (Proclamation)
- National Women's History Month (Proclamation)
- Youth Art Month (Proclamation)
- 25th Annual Women in Construction Week (Proclamation)
- CEDAW Task Force Certificates of Appreciation

### **PUBLIC FORUM** (7:25 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** (7:30 PM)

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

- C1.** Receive City Council Calendar of Meetings for March 2023 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Recommendation: Receive City Council Calendar of Meetings for March 2023.

- C2.** Approve City Council City Council Regular Meeting Minutes of February 21, 2023 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Recommendation: Approve City Council Regular Meeting minutes of February 21, 2023.

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

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

- C4.** Receive and Review the List of Agenda Items Requested by City Councilmembers (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

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

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

Recommendation: Accept the resignation of Barbara Ebright from the Senior Advisory Commission and direct the City Clerk to post the notice of unscheduled vacancy.

- C6.** Authorize the City Manager to execute the Non-Exclusive License Agreement between the City of Milpitas and Crown Castle Fiber LLC, a New York Limited Liability Company, for the installation of Small Cell Facilities on Municipal Facilities (Staff Contact: Roberto Alonzo, Principal Civil Engineer, 408-586-3316)

Recommendation: Authorize the City Manager to execute the Non-Exclusive License Agreement between the City of Milpitas and Crown Castle Fiber LLC, a New York Limited Liability Company, for the installation of Small Cell Facilities on Municipal Facilities and find a CEQA exemption.

- C7.** Adopt a Resolution Granting Acceptance of Alviso Adobe Renovation. (Phase V – Exhibits), Project No. 5055, Authorizing the City Engineer or other appropriate representative designated by the City Manager, to File a Notice of Completion, and Authorize the City Engineer, or other appropriate representative designated by the City Manager, to Issue a Notice of Final Acceptance after the One-Year Warranty (Staff Contact: Michael Silveira, Capital Improvement Program Manager, 408-586-3303)

Recommendation: Adopt a Resolution granting acceptance of Alviso Adobe Renovation (Phase V – Exhibits), Project No. 5055; authorizing the City Engineer, or other appropriate representative designated by the City Manager, to file a Notice of Completion, and authorizing the City Engineer, or

other appropriate representative designated by the City Manager, to issue a Notice of Final Acceptance after the one-year warranty.

**C8. Adopt a Resolution Initiating Proceedings for the Annual Levy and Collection of Assessments and Ordering the Preparation of the Annual Engineer's Report for Landscaping and Lighting Maintenance Assessment District No. 95-1 (McCarthy Ranch) (Staff Contact: Roberto Alonzo, Principal Civil Engineer, 408-586-3316)**

Recommendation: Adopt a resolution initiating proceedings for the Annual Levy and Collection of Assessments and Ordering the Preparation of the Annual Engineer's Report for Landscaping and Lighting Maintenance Assessment District No. 95-1 (McCarthy Ranch).

**C9. Adopt a Resolution Initiating Proceedings for the Annual Levy and Collection of Assessments and Ordering the Preparation of the Annual Engineer's Report for Landscaping and Lighting Maintenance Assessment District No. 98-1 (Sinclair Horizon) (Staff Contact: Roberto Alonzo, Principal Civil Engineer, 408-586-3316)**

Recommendation: Adopt a resolution initiating proceedings for the Annual Levy and Collection of Assessments and ordering the preparation of the Annual Engineer's Report for Landscaping and Lighting Maintenance Assessment District No. 98-1 (Sinclair Horizon).

**C10. Adopt a Resolution Granting Acceptance of Public Improvements and Approve a Reduction of the Faithful Performance Bond for the Lantana Apartments Residential Project and Grant Authorization to the City Engineer to Release the Performance Bond after the One-Year Warranty Period (Staff Contact: Roberto Alonzo, Principal Civil Engineer, 408-586-3316)**

Recommendation: Adopt a resolution granting acceptance of the completed public improvements for the Lantana Apartments Residential Project as shown on Public Improvement Plans No. 2-1235; and approve a reduction in the faithful performance bond to \$112,250.00, which is 25% of the security's original value which shall be in effect for the duration of the warranty period; and grant authorization to the City Engineer to release the performance bond after the one-year warranty period without further City Council action provided that all required warranty work is completed to the satisfaction of the City Engineer.

**C11. Approval of Fourth Amendment to Memorandum of Agreement with Other Santa Clara Valley Municipalities to Allow for the Continuation of the Santa Clara Valley Urban Runoff Pollution Prevention Program (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602; and Elaine Marshall, Deputy Public Works Director, 408-586-2603)**

Recommendation: Authorize the City Manager to execute the Fourth Amendment to the Memorandum of Agreement (MOU) for the Santa Clara Valley Urban Runoff Pollution Prevention Program which will allow for a five (5) year extension of the MOU with no change to the existing 2.75% cost share for the City of Milpitas.

**C12. Adopt a Resolution to Appoint Second Council Liaison to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Community Task Force (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001; and Mayor Montano, 408-586-3024)**

Recommendation: (1) Adopt a resolution approving the addition of a second City Council Liaison to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Task Force; and (2) Approve the Mayor's Appointment of Vice Mayor Evelyn Chua as the second City Council Liaison to the CEDAW Task Force.

**C13. Consider the Recommendation from Mayor Montano for Appointments to City Commissions (Contact: Mayor Montano, 408-586-3024)**

Recommendation: Receive the recommendation from Mayor Montano and approve appointments to City Commissions.

**C14. Adopt a Resolution to End the Emergency Proclaimed by then Interim City Manager on March 12, 2020, and Ratified by the City Council on March 17, 2022 (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3056)**

Recommendation: Adopt a resolution of the City Council of the City of Milpitas for Termination of the Proclamation of Local Emergency regarding Novel Coronavirus (COVID-19).

**PUBLIC HEARINGS (7:35 PM)**

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

**15. Conduct a Public Hearing for the 2023 Weed Abatement Program and Adopt a Resolution to Abate the Weeds (Staff Contact: Arthur Belton, Deputy Fire Chief/Fire Marshal, 408-586-3384)**

Recommendation: Conduct a public hearing and adopt a resolution directing the County of Santa Clara Consumer and Environmental Protection Agency - Weed Abatement Program to abate the nuisance, keep an account of the cost, and embody such account in a report and assessment list to the City Council in accordance with the Milpitas Municipal Code.

**16. Conduct a Public Hearing and Introduce an Ordinance Amending Title III "Business and Professions" of the Milpitas Municipal Code to add Chapter 9 "Permits for Retailers of Tobacco Products" (Staff Contact: Ned Thomas, Planning Director, 408-586-3273)**

Recommendation: Continue to Regular Meeting of April 4, 2023.

**COMMUNITY SERVICES AND SUSTAINABLE INFRASTRUCTURE (8:00 PM)**

**17. Update on Street Sweeping Pilot Project Expansion (CIP #3455) (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602; and Elaine Marshall, Deputy Public Works Director, (408) 586-2603)**

Recommendation: Receive a presentation on the options for expanding the Pilot Street Sweeping Program and support staff's recommendation to perform additional survey work and return to the Mayor and City Council to discuss next steps following completion of the surveys.

**ANNOUNCEMENTS AND FUTURE AGENDA ITEMS (9:00 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 (9:05 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](mailto: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](http://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](http://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](http://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](mailto:CityClerk@milpitas.gov) prior to the meeting. You may request a larger font agenda.*

# Milpitas City Council Calendar

## March 2023

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

| April 2023 |    |    |    |    |    |    |
|------------|----|----|----|----|----|----|
| S          | M  | T  | W  | Th | F  | S  |
| 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         |    |    |    |    |    |    |

Item # C1.

| Sunday    | Monday                                                                                       | Tuesday                                                                     | Wednesday                                                                                                                                                                                                          | Thursday                                                                                                                                                                                                                                                                                              | Friday                                                                                                                                                   | Saturday                                                  |
|-----------|----------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------|
|           |                                                                                              |                                                                             | <b>1</b><br><b>2:00 PM</b> -Santa Clara VTA Monthly Briefing - Northeast Group (CM) (Virtual)<br><b>2:30 PM</b> -SCC Emergency Operational Area Council (CM)<br><b>7:00 PM</b> -Community Advisory Commission (AP) | <b>2</b><br><b>3:00 PM</b> -Ad Hoc Parks, Streets and Facilities Naming Subcommittee (CM/EC)<br><b>5:30 PM</b> -Santa Clara VTA Board of Directors (CM)<br><b>5:30 PM</b> -Milpitas Chamber of Commerce Board (GB)                                                                                    | <b>3</b><br><b>9:00 AM</b> -VTA Board of Directors Workshop (CM)                                                                                         | <b>4</b><br><b>11AM-2PM</b> -Holi Festival (Cardoza Park) |
| <b>5</b>  | <b>6</b><br><b>7:00 PM</b> -Parks, Recreation & Cultural Resources Commission (HL)           | <b>7</b><br><b>6:00 PM</b> -Closed Session<br><b>7:00 PM</b> -City Council  | <b>8</b><br><b>7:00 PM</b> -Silicon Valley Clean Energy Board of Directors (EC) (Cupertino)                                                                                                                        | <b>9</b><br><b>4:00 PM</b> -Santa Clara VTA Policy Advisory Committee (EC)<br><b>6:00 PM</b> -Youth Advisory Commission (HL)<br><b>6:00 PM</b> -Cities Association Legislative Action Committee (CM)<br><b>7:00 PM</b> -Cities Assoc of SCC (CM)                                                      | <b>10</b>                                                                                                                                                | <b>11</b>                                                 |
| <b>12</b> | <b>13</b><br><b>4:30 PM</b> -Economic Development and Trade Commission (CM)                  | <b>14</b><br><b>4:00 PM</b> -Milpitas HOPE Task Force                       | <b>15</b><br><b>6:00 PM</b> -Energy and Environmental Sustainability Commission (EC)                                                                                                                               | <b>16</b><br><b>3:00 PM</b> -VTA Safety, Security, and Transit Planning and Operations Committee (CM)<br><b>5:30 PM</b> - Measure F Oversight Committee<br><b>6:30 PM</b> -Bay Area Water Supply Conservation Agency (CM)<br><b>7:00 PM</b> -Public Safety and Emergency Preparedness Commission (HL) | <b>17</b>                                                                                                                                                | <b>18</b>                                                 |
| <b>19</b> | <b>20</b><br><b>7:00 PM</b> -Library and Education Commission (EC) (Milpitas Public Library) | <b>21</b><br><b>6:00 PM</b> -Closed Session<br><b>7:00 PM</b> -City Council | <b>22</b><br><b>4:00 PM</b> -City/School Collaborative Subcommittee (CM/EC)<br><b>7:00 PM</b> -Planning Commission                                                                                                 | <b>23</b><br><b>4:00 PM</b> -Silicon Valley Regional Interoperability Authority (SVRIA) (GB)                                                                                                                                                                                                          | <b>24</b>                                                                                                                                                | <b>25</b>                                                 |
| <b>26</b> | <b>27</b><br><b>7:00 PM</b> -Arts Commission (AP)                                            | <b>28</b>                                                                   | <b>29</b>                                                                                                                                                                                                          | <b>30</b>                                                                                                                                                                                                                                                                                             | <b>31</b><br><br><b>Cesar Chavez Day</b><br><b>City Hall Closed</b> |                                                           |

\*Finance Subcommittee will only meet as needed



# REGULAR MEETING OF THE MILPITAS CITY COUNCIL

**MINUTES**  
**TUESDAY, FEBRUARY 21, 2023**

The City Council of the City of Milpitas convened in a Regular Meeting of the Milpitas City Council on February 21, 2023, 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 Montano called the Regular City Council meeting to order at 7:06 PM. Roll Call was taken by City Clerk Guzzetta.

PRESENT: Mayor Montano, Vice Mayor Chua, Councilmembers Barbadillo, Lien, and Phan.

ABSENT: None.

## **PLEDGE OF ALLEGIANCE**

Mayor Montano led the Pledge of Allegiance.

## **INVOCATION**

Councilmember Lien presented the invocation.

## **PRESENTATIONS**

Mayor Montano presented a proclamation in recognition of Rare Disease Day.

## **PUBLIC FORUM**

There were the following public speakers:

1. Rob Means
2. Paul Ellis
3. Tom Valore
4. Joseph Weinstein
5. Voltaire Montemayor
6. Anna Nguyen
7. Christopher Martin
8. Frank Bush
9. Uyenthy Nguyen

## **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**

Vice Mayor Chua read the Code of Conduct.

### **APPROVAL OF AGENDA**

Motion: to approve the February 21, 2023 Regular Meeting Agenda.

Motion/Second: Vice Mayor Chua / Councilmember Lien

Motion carried by the following:

AYES: Councilmembers Barbadillo, Lien, Phan, Vice Mayor Chua, and Mayor Montano

NOES: None

### **CONSENT CALENDAR**

Motion: to pull Items C9 and C10 and defer to the next City Council meeting.

Motion/Second: Councilmember Barbadillo / Vice Mayor Chua

Motion carried by the following:

AYES: Councilmembers Barbadillo, Vice Mayor Chua, and Mayor Montano

NOES: Councilmembers Lien and Phan

Motion: to approve the Consent Calendar and pull Item C6.

Motion/Second: Vice Mayor Chua / Councilmember Barbadillo

Motion carried by the following:

AYES: Councilmembers Barbadillo, Lien, Phan, Vice Mayor Chua, and Mayor Montano

NOES: None

**C1. Receive City Council Calendar of Meetings for February and March 2023 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)**

Received City Council Calendar of Meetings for February and March 2023.

**C2. Approve City Council City Council Regular Meeting Minutes of February 7, 2023, and Special Meeting Minutes of February 2, 2023 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)**

Approved City Council Regular Meeting minutes of February 7, 2023, and Special Meeting Minutes of February 2, 2023.

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

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

**C4. Receive and Review the List of Agenda Items Requested by City Councilmembers (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)**

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

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

Accepted the resignation of Karen Adams from the Senior Advisory Commission and directed the City Clerk to post the notice of unscheduled vacancy.

- C7. Authorize City Manager's Response Letter to the December 14, 2022 Santa Clara County Civil Grand Jury Final Report "Show Me the Money: Financial Transparency Needed" (Staff Contact: Lauren Lai, Finance Director, 408-586-3111; and Michael Mutalipassi, City Attorney, 408-586-3040)**

Authorized the City Manager to send a letter in response to the December 14, 2022 Santa Clara County Civil Grand Jury Final Report "Show Me the Money: Financial Transparency Needed" pursuant to Penal Code Section 933.

- C8. Adopt a Resolution Approving a Site Development Permit to Develop a New Two-story, Single-family Residence with an Attached Accessory Dwelling Unit, an In-Ground Swimming Pool/Spa, and Associated Site Improvements on a Vacant 4.29-acre Lot Located in the R1-H Single-family Residential Zoning District with a Hillside Combining District at 531 Vista Ridge Drive (Staff Contact: Ned Thomas, Planning Director, 408-586-3273)**

Considered the exemption in accordance with CEQA and adopted **Resolution No. 9218** approving Site Development Permit No. SD22-0001, subject to the attached conditions of approval.

- C9. Authorize the City Manager to execute the Non-Exclusive License Agreement between the City of Milpitas and Crown Castle Fiber LLC, a New York Limited Liability Company, for the installation of Small Cell Facilities on Municipal Facilities (Staff Contact: Roberto Alonzo, Principal Civil Engineer, 408-586-3316)**

Deferred to March 7, 2023.

- C10. Adopt a Resolution Granting Acceptance of Alviso Adobe Renovation. (Phase V – Exhibits), Project No. 5055, Authorizing the City Engineer or Other Appropriate Representative Designated by the City Manager to File a Notice of Completion, and Authorize the City Engineer or Other Appropriate Representative Designated by the City Manager to Issue a Notice of Final Acceptance after the One-Year Warranty (Staff Contact: Michael Silveira, Capital Improvement Program Manager, 408-586-3303)**

Deferred to March 7, 2023.

- C11. FY 2022-23 2nd Quarter Financial Status Report for the Quarter Ended December 31, 2022 (Staff Contact: Lauren Lai, Finance Director, 408-586-3111)**

Reviewed the FY 2022-23 Quarterly Financial Status Report for the quarter ended December 31, 2022.

## **PUBLIC HEARINGS**

- 12. Conduct a Public Hearing and Introduce an Ordinance Amending Title III "Business and Professions" of the Milpitas Municipal Code to add Chapter 9 "Permits for Retailers of Tobacco Products" (Staff Contact: Ned Thomas, Planning Director, 408-586-3273)**

Continued to Regular Meeting of March 7, 2023.

## **LEADERSHIP AND SUPPORT SERVICES**

- 13. Review Fiscal Year 2022-23 Mid-Year Report, Approve FY2022-23 Mid-year Budget Amendments, Adopt a Resolution Amending Resolution No. 1626, the Classification Plan, to Reclassify Positions, Approve and Adopt the Pay Schedule titled "New Job Classifications/Salary Table (Staff Contact: Lauren Lai, Finance Director, 408-586-3111)**

Reviewed the FY 2022-23 Mid-Year Report; approved FY 2022-23 Mid-Year Budget Amendments; and adopted **Resolution No. 9219** amending Resolution No. 1626, the Classification Plan, to reclassify positions, approve and adopt the pay schedule titled “New Job Classifications/Salary Table”, and amend budgeted allocated positions.

Finance Director Lai presented the report.

There were no public speakers.

Finance Director Lai and Assistant City Manager Kantak responded to questions from the City Council.

Vice Mayor Chua observed that the City’s goal for the next budget cycle should be to reduce overtime. She also asked for staff to provide a list of all consultants for the last year, the projects they have, and contract amounts.

Councilmember Barbadillo asked for more information on Fire Department overtime.

After discussion, Councilmember Lien made a motion: to review the FY 2022-23 Mid-Year Report, to approve FY 2022-23 Mid-Year Budget Amendments; and to adopt **Resolution No. 9219** amending Resolution No. 1626, the Classification Plan, to reclassify positions, approve and adopt the pay schedule titled “New Job Classifications/Salary Table”, and amend budgeted allocated positions.

Vice Mayor Chua seconded the motion but asked to amend the motion to include direction to staff to provide an informational memorandum on Fire Department overtime and provide a list of all consultants for the last year, their projects, and contract amounts. Councilmember Lien accepted the amendment.

Motion/Second: Councilmember Lien / Vice Mayor Chua

Motion carried by the following:

AYES: Councilmembers Barbadillo, Lien, Phan, Vice Mayor Chua, and Mayor Montano

NOES: None

**14. Receive Report on the American Rescue Plan Act (ARPA) Investment Plan and Provide Direction on Changes, if Any (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053; and Lauren Lai, Finance Director, 408-586-3111)**

Received report on the American Rescue Plan Act (ARPA) Investment Plan and provided direction on changes, if any.

Assistant City Manager Kantak introduced the item. Finance Director Lai presented the report.

There were the following public speakers:

1. Tom Valore
2. Yolie Garcia
3. Bill Korbe

Vice Mayor Chua suggested reallocating funds from the Chamber of Commerce in an amount of \$51,500.00 to the Business Improvement District, and at least \$50,000.00 to Hotel Accommodations for the Unhoused.

Councilmember Lien proposed reallocating the entirety of the Chamber of Commerce allocation to assist the unhoused.

Councilmember Barbadillo asked for further information on the staff meeting with the Chamber of Commerce and questioned if the Chamber representatives discussed their ARPA request.

Councilmember Barbadillo requested that if the funding is reallocated, that there be the opportunity for the Chamber of Commerce to ask for funding assistance. In addition, he supported reallocations to Public Safety such as additional pedestrian crossings, to Community Services for homeless students, to Social Services funding for more services to seniors, and reallocate funds to explore a Citywide Senior Discount Program.

Councilmember Phan agreed that the Chamber of Commerce funds should be reallocated entirely. He spoke in support of reallocating funds for Business Improvement District and Workforce Development. Councilmember Phan voiced concerns for reallocating \$30,000 from LGBTQIA+ supportive services to “Family Friendly” programs. He agreed with Councilmember Lien’s suggestion for allocating resources to the unhoused and supported Councilmember Barbadillo’s request to reallocate funds related to exploring a Citywide Senior Discount.

Mayor Montano supported reallocation to the Business Improvement District, Hotel Vouchers, and exploring a Senior Discount Program. She asked to consider reallocations for a feasibility study for Parcel 2 and 3 for a police substation, a safe parking space with a day worker program, Main Street Christmas holiday decorations, consider a reduction for the Rent and Mortgage Relief Program from \$5000 to \$3000 to assist a greater number of participants, and graffiti abatement through Beautify Milpitas.

Police Chief Hernandez, Assistant City Manager Kantak, Deputy City Manager Cano, and Finance Director Lai responded to questions from Councilmember Barbadillo and Vice Mayor Chua regarding Public Safety and Infrastructure allocations.

Vice Mayor Chua asked to include at least one ADU workshop a year for the next three years as part of Community Events.

After discussion, Vice Mayor Chua made a motion: to defund the Pilot Curbside Trash Pick Up Program in an amount of \$85,000, Small Business Assistance Program in an amount of \$4,900, Sustainable Neighborhood Program in an amount of \$60,000, and Milpitas Chamber of Commerce Program in an amount of \$200,000; to allocate \$51,500 from other programs to contract for the Business Improvement District; to direct staff to find a LGBTQIA+ youth services provider in the Social Services Program; to reallocate \$70,000 within the Workforce Development Program for Youth Force; and support staff’s recommendation to reallocate the \$97,000 within the parks appropriation to Selwyn Park.

Motion/Second: Vice Mayor Chua / Councilmember Phan

Motion carried by the following:

AYES: Councilmembers Barbadillo, Lien, Phan, Vice Mayor Chua, and Mayor Montano

NOES: None

## **ITEMS PULLED FROM CONSENT CALENDAR**

### **C6. Approve Proposed Edits to the City Council Procedures and Protocols Handbook (Staff Contact: Michael Mutalipassi, City Attorney, 408-586-3041)**

Approved proposed edits to the City Council Procedures and Protocols Handbook.

Councilmember Lien voiced concerns that the City Council was not seated as to the policy detailed in the handbook. She asked the City Council to be seated as described in the policy.

Mayor Montano suggested agendizing a special meeting to review the Council Handbook.

Motion/Second: Councilmember Lien / Vice Mayor Chua

Motion carried by the following:

AYES: Councilmembers Barbadillo, Lien, Phan, Vice Mayor Chua, and Mayor Montano  
NOES: None

### **ANNOUNCEMENTS AND FUTURE AGENDA ITEMS**

Councilmember Lien asked staff to look into improving the sound system at the Milpitas Community Center.

Vice Mayor Chua requested lights to be added to Gill Park for night time usage.

### **ADJOURNMENT**

Mayor Montano adjourned the meeting at 10:40 PM.

*Draft meeting minutes submitted by City Clerk, Suzanne Guzzetta*

## TENTATIVE CITY COUNCIL AGENDA ITEM LIST

Item # C3.

as of 3/2/2023

**March 21, 2023 – Regular Meeting**

### **CLOSED SESSION**

**INVOCATION** (Councilmember Barbadillo)

### **PRESENTATION**

- STEM Milpitas Student Winners

### **CONSENT CALENDAR**

1. Receive City Council calendar for March and April 2023 (City Clerk)
2. Approve City Council Meeting minutes of February 28 and March 7, 2023 (City Clerk)
3. Preview list of items for April 4, 2023 (City Clerk)
4. Councilmember Request List (City Clerk)
5. Commission Appointments (Mayor)
6. Adopt a Resolution to Approve Project Plans and Specifications, Award Construction Contract to DeSilva Gates Construction for Street Resurfacing Project No. 4283, 4303, 4304; and Approve Budget Change Form (Engineering)
7. Plante Moran contract amendment - Financial & HR process assessment and ERP & HRIS procurement support (Finance)
8. Cal-OES Designation of Applicant's Agent Resolution for Non-State Agencies (Fire)
9. Annual Progress Report/Successor Agency Report (Housing)

### **PUBLIC HEARING**

10. Water and Sewer Rate 5-Year Increases (Public Works)

### **COMMUNITY DEVELOPMENT**

11. Housing Update (Housing)
12. 1000 Hillview Quarterly Update (City Manager)

### **COMMUNITY SERVICES**

### **PUBLIC SAFETY**

### **LEADERSHIP**

13. Open Government Ordinance Amendments (City Attorney)

### **REPORTS**

**MILPITAS CITY COUNCIL  
AGENDA ITEM REQUESTS**

Item # C4.

| <b>OPEN ITEMS</b>  |                                                                                                                                                                                                                                                                                                 |                      |                       |                                                                                                                                                                                                                                                                                                                                                                                    |
|--------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Request No.</b> | <b>Topic</b>                                                                                                                                                                                                                                                                                    | <b>Submitted by:</b> | <b>Date Requested</b> | <b>STATUS and/or DATE scheduled on City Council meeting agenda:</b>                                                                                                                                                                                                                                                                                                                |
| <b>1</b>           | Add lights to Gill Park for Nighttime Usage                                                                                                                                                                                                                                                     | Chua                 | 2/21/2023             | At the February 28, 2023 CIP Study Session, Council asked for an inventory of parks with types of lighting available.                                                                                                                                                                                                                                                              |
| <b>2</b>           | Staff look into improving the sound system at Milpitas Community Center                                                                                                                                                                                                                         | Lien                 | 2/21/2023             | On 2/23/23, City Manager sent an email update detailing staff changes to working with organizers to ensure they are aware of the system limitations.                                                                                                                                                                                                                               |
| <b>3</b>           | Look into purchasing a larger electronic billboard for Library                                                                                                                                                                                                                                  | Montano              | 2/7/2023              | At the February 28, 2023 CIP Study Session, the Council opted to discuss at the next prioritization session in June 2023                                                                                                                                                                                                                                                           |
| <b>4</b>           | City Manager write a congratulatory letter from the Council to newly elected Sheriff Bob Jonsen and express support for two platforms: 1) form partnership among cities to address crimes in Santa Clara County; and 2) and modernizing booking for detainees / suspects streamline the process | Chua                 | 2/7/2023              | Letter was sent to Sheriff Jonsen on February 22                                                                                                                                                                                                                                                                                                                                   |
| <b>5</b>           | Have the City look into the possibility of a Citywide Senior Discount                                                                                                                                                                                                                           | Barbadillo           | 2/7/2023              | This item will be discussed at the next quarterly prioritization in June 2023                                                                                                                                                                                                                                                                                                      |
| <b>6</b>           | See if City Manager and staff could assist in finding a month and day to celebrate an International Cultural Festival on Main Street                                                                                                                                                            | Lien                 | 2/7/2023              | This item will be discussed at the next quarterly prioritization in June 2023                                                                                                                                                                                                                                                                                                      |
| <b>7</b>           | 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.                                                                                                                                            |
| <b>8</b>           | Schedule an additional ADU workshop                                                                                                                                                                                                                                                             | Chua                 | 9/6/2022              | Similar to last year, staff will support any webinar hosted by a community partner.                                                                                                                                                                                                                                                                                                |
| <b>9</b>           | Discuss converting vacant lot that was a basketball court into a community garden at Vasona and Adobe                                                                                                                                                                                           | Montano              | 8/16/2022             | Item brought forward as part of the City Council additional workplan items prioritization in February 2023. Mayor Montano asked it come back after a survey of residents was completed to determine community support. At the February 28, 2023 CIP Study Session, Council asked staff to ask the nearby community for their input on other uses they would want for the property. |
| <b>10</b>          | Quarterly or Monthly crime statistics on Homekey Project                                                                                                                                                                                                                                        | Chua                 | 6/7/2022              | PD will present quarterly reports starting on November 15, 2022.                                                                                                                                                                                                                                                                                                                   |

| <b>ACTIVE ITEMS</b> |              |                      |                       |                                                                     |
|---------------------|--------------|----------------------|-----------------------|---------------------------------------------------------------------|
| <b>Request No.</b>  | <b>Topic</b> | <b>Submitted by:</b> | <b>Date Requested</b> | <b>STATUS and/or DATE scheduled on City Council meeting agenda:</b> |

**MILPITAS CITY COUNCIL  
AGENDA ITEM REQUESTS**

Item # C4.

| Request No. | Topic                                                                                                                                                                                                                                   | Submitted by: | Date Requested | STATUS and/or DATE scheduled on City Council meeting agenda:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 11          | 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. Staff, in partnership with NOVAworks, provided information about past and upcoming layoffs, wage and labor data as well as job and career resources available to Milpitas residents and businesses at the Economic Development and Trade Commission meeting on January 9, 2023. City staff is continuing to partner with NOVAworks by promoting their upcoming layoff assistance webinars to assist with career transition and unemployment services and resources. One webinar took place on January 24 and other webinars are scheduled to take place on February 7 and 21. |
| 12          | 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      | Discussed at February 2023 Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward during Prioritization Discussion on 2/7/23. At the 2/28/2023 CIP Study Session, Council directed staff to include funding for a feasibility analysis.                                                                                                                                                                                                                                                                                                                                                           |
| 13          | City Manager look into implementing a workshop for small businesses on the bidding process for projects in the city                                                                                                                     | Chua          | 8/9/2022       | Discussed at February 2023 Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward during Prioritization Discussion on 2/7/23                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 14          | Funding to hire a consultant for the Sunnyhills Historical Designation on a state level                                                                                                                                                 | Tran          | 6/7/2022       | Based on staff research, the best way to try for a Historical District Designation is at the National Level. This can be wrapped into the approved CIP for the Historical Resources Plan update or through grant consultant California Consulting. Request will be included with the Historic Resources Master Plan project approved as part of the 2023-2027 Capital Improvement Program.                                                                                                                                                                                                                                           |
| 15          | Request for Crossing Guards at McCandless and Montague Expressway and review wages for Crossing Guards                                                                                                                                  | Montano       | 4/5/2022       | Info Memos were sent to the City Council on 6/13/2022 and 1/27/2023. At the January 31st budget study session, Council voted to move to a contract model; 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.                                                                                                                                                                                                                                                                                 |
|             |                                                                                                                                                                                                                                         |               |                | At the January 31, 2023 City Council budget hearing, staff was directed to update the City's Fiscal Policies to provide an option for a portion of future surplus funding to be reserved for real estate acquisition. Staff will include this edit to the Fiscal Policies as part of the Proposed Fiscal Year 2023-2024 Operating Budget;                                                                                                                                                                                                                                                                                            |

**MILPITAS CITY COUNCIL  
AGENDA ITEM REQUESTS**

Item # C4.

| Request No. | Topic                                                                                                                    | Submitted by: | Date Requested | STATUS and/or DATE scheduled on City Council meeting agenda:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-------------|--------------------------------------------------------------------------------------------------------------------------|---------------|----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 16          | 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                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 17          | Memorial Plaque in honor of youth skateboarder that passed away                                                          | Montano       | 6/7/2022       | At the January 31 2023 City Council budget hearing, City Council voted to consider this item in the FY 2023-24 budget development.; Discussed at Spring Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward during Summer Quarterly City Council Workplan Items Prioritization Discussion on 9/06/2022                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 18          | Explore the policy for locking mechanisms on shopping carts for large commercial businesses                              | Tran          | 4/19/2022      | MMC V-13-140 Mandatory Plan to Prevent Cart Removal includes requirement for physical measures to prevent cart removal however V-13-120 provides an exemption for cart owner that agrees to enter into a contract with a City-designated retrieval service. Staff suggestion to Council is to review this exemption and repeal it which would require all cart owners to have physical measures to prevent cart removal. Business outreach was conducted to grocery store operators in Q2 of 2022 to inquire about shopping cart removal and theft. Grocery stores contacted were Ocean Supermarket, Seafood City Supermarket, Chung Chou City, Milpitas Grocery Outlet, and 99 Ranch Market.<br><br>Discussed at Spring Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward during Summer Quarterly City Council Workplan Items Prioritization Discussion on 9/06/2022 |
| 19          | Explore an ordinance or policy to reduce thefts and increase security in the commercial retail parking areas             | Chua          | 4/5/2022       | CAO conducting legal review of policies requiring businesses to hire security/install cameras; 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 # C4.

| Request No. | Topic                                                                                                                                         | Submitted by: | Date Requested | STATUS and/or DATE scheduled on City Council meeting agenda:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-------------|-----------------------------------------------------------------------------------------------------------------------------------------------|---------------|----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 20          | Create a plan for future solar paneling at City facilities                                                                                    | Montano       | 3/1/2022       | As discussed with the City Council at the 1/31/2023 Budget Study Sessio, staff will continue to explore grant opportunities to install additional solar panels on City facilities. However, staff will only proceed with further development if this grant funding is identified so work (other than reviewing grant opportunities) is on hold at this time. 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 |
| 21          | Evaluate reopening the childcare center with a non-profit organization running the center                                                     | Montano       | 2/1/2022       | No additional funds required to complete the internal review. Internal review can be done by late 2023. Approved during Spring Quarterly City Council Workplan Items Prioritization Discussion on 5/03/2022.                                                                                                                                                                                                                                                                                                                                                                                       |
| 22          | 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.                                                                                                                                                                                                                                                                                                                                                                                                             |
| 23          | Staff to look into mural Art on Great Mall Parkway on the VTA owned Light rail pillars                                                        | Montano       | 11/16/2021     | VTA is not responsive to requests from the City to meet on this project. A discussion on other locations or projects with Council may be needed; 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                                                                                                                                                                                                                          |
| 24          | 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     | Requires legal analysis of 1:21-cv-07695-AT-SLC DoorDash, Inc. v. city of New York and 3:21-cv-05502-EMC Doordash, Inc. et al v. City and County of San Francisco. Doordash v. NYC remains pending and may settle the law on the matter. CAO will prepare confidential memorandum for the Council. Discussed at Spring Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward at the 5/03/2022 meeting                                                                                                                                                          |
| 25          | Have a picture of Albert Vogel Sr. put up in the Senior Center                                                                                | Montano       | 10/19/2021     | No additional funding needed. Need final names from City Council. Approved to move forward at the 1/11/2022 Council meeting; Staff engaged the artist of the existing mural regarding this Council approved item.                                                                                                                                                                                                                                                                                                                                                                                  |
| 26          | 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                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

NOTE: Deferred and Completed Items are not listed

**MILPITAS CITY COUNCIL  
AGENDA ITEM REQUESTS**

Item # C4.

| Request No. | Topic                                                                                                                  | Submitted by: | Date Requested | STATUS and/or DATE scheduled on City Council meeting agenda:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|-------------|------------------------------------------------------------------------------------------------------------------------|---------------|----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 27          | Include a bust of Maria Lemire on the Mural in front of the Senior Center                                              | Montano       | 8/17/2021      | Maria Lemery is to be included on the Senior Center Mural. It's not an actual "bust" Approved to move forward at the 1/11/2022 Council meeting; Staff engaged the artist of the existing mural regarding this Council approved item.                                                                                                                                                                                                                                                                                                                                                             |
| 28          | Look into opening up the Senior Center on Saturdays for half a day                                                     | Chua          | 8/5/2021       | Funding for Senior Center hours will be incorporated in the FY23-24 budget 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.                                                                                                                                                                                                                                                                            |
| 29          | Look into bringing back a roller rink                                                                                  | Montano       | 8/5/2021       | Monies budgeted. Roller Rink bids coming back end of Feb/early March. Event schedule for August 4 & 5, 2023.<br><br>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                                                                                                                                                                                                                         |
| 30          | Staff to create a plan on how to increase the number of local businesses doing business with the City                  | Chua          | 4/6/2021       | Staff is tracking this local business participation item as part of Council Priority Item 3 in Group 1 on this list; 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.                                                                                                                                                                                                                                                                                                                   |
| 31          | Staff to provide information on a landmark policy for the City of Milpitas                                             | Tran          | 3/16/2021      | This is part of the CIP for updating the Historic and Cultural Resources Plan; 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. |
| 32          | Amendment to the existing ordinance for third-party food delivery vendor services to prohibit regulatory response fees | Phan          | 2/16/2021      | See update to item titled "Request for the City to make the temporary third-party food deliver fee caps permanent and add additional provisions for enforcement"<br><br>Agendized for discussion on 3/16/2021, deferred to 4/06/2021; CC direction for City Attorney to prepare a report; At the 11/12/2021 Transportation Subcommittee, the Subcommittee directed to bring back this request to Council as part of the FY 2022-23 budget process.                                                                                                                                               |

**MILPITAS CITY COUNCIL  
AGENDA ITEM REQUESTS**

Item # C4.

| Request No. | Topic                                          | Submitted by: | Date Requested | STATUS and/or DATE scheduled on City Council meeting agenda:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|-------------|------------------------------------------------|---------------|----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 33          | 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. |
| 34          | 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)

|                      |                                                                                                                                                                           |
|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Item Title:</b>   | <b>Accept Commissioner Resignation (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)</b>                                                                        |
| <b>Category:</b>     | Consent Calendar-Leadership and Support Services                                                                                                                          |
| <b>Meeting Date:</b> | 2/21/2023                                                                                                                                                                 |
|                      | <u>Recommendation:</u> Accept the resignation of Barbara Ebright from the Senior Advisory Commission and direct the City Clerk to post the notice of unscheduled vacancy. |

### **BACKGROUND:**

In accordance with the City of Milpitas Commission By-Laws adopted as Resolution No. 7702, any member or alternate member of a Commission who is no longer available to serve, must submit a resignation in writing by sending a written communication to the Mayor and the City Clerk. The written resignation must then be accepted and confirmed by City Council via action on the consent calendar at a regularly scheduled City Council meeting. Barbara Ebright submitted a notice of resignation from the Senior Advisory Commission.

### **ANALYSIS:**

By state law, a Notice of an Unscheduled Vacancy must be posted by the City Clerk to advertise the vacant Commission seat. Final appointment to the board, commission, or committee for the Unscheduled Vacancy shall not be made by the legislative body for at least ten working days after the posting of the notice in the Clerk's office. The notice of the unscheduled vacancy for the Senior Advisory Commission will be posted Wednesday, March 8, 2023.

### **FISCAL IMPACT:**

There is no fiscal impact associated with this item.

### **RECOMMENDATION:**

Accept the resignation of Barbara Ebright from the Senior Advisory Commission and direct the City Clerk to post the notice of unscheduled vacancy.

### **Attachments:**

1. Letter from Senior Advisory Commissioner Barbara Ebright

**Suzanne Guzzetta**

---

**From:** sguzzetta@milpitas.gov  
**Subject:** FW: Retirement from the Senior Advisory Commission

---

**From:** Barbara Ebright [REDACTED]  
**Sent:** Saturday, February 18, 2023 6:02 PM  
**To:** Carmen Montano <[cmontano@milpitas.gov](mailto:cmontano@milpitas.gov)>  
**Cc:** John Macon <[jmacon@ci.milpitas.ca.gov](mailto:jmacon@ci.milpitas.ca.gov)>; Barbara Ebright [REDACTED]  
**Subject:** Retirement from the Senior Advisory Commission

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

Dear Mayor Montano,

I have decided to retire from the Senior Advisory Commission on my 82nd birthday, February 26. It has been an honor to be a member of this commission for over 16 years and I depart with many fond memories working with past commissioners and particularly with city staff members who always worked to ensure our success. Their hard work was always appreciated.

Sincerely,

Barbara Ebright



## CITY OF MILPITAS AGENDA REPORT (AR)

|                      |                                                                                                                                                                                                                                                                                                                               |
|----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Item Title:</b>   | <b>Authorize the City Manager to execute the Non-Exclusive License Agreement between the City of Milpitas and Crown Castle Fiber LLC, a New York Limited Liability Company, for the installation of Small Cell Facilities on Municipal Facilities (Staff Contact: Roberto Alonzo, Principal Civil Engineer, 408-586-3316)</b> |
| <b>Category:</b>     | Consent Calendar-Community Development                                                                                                                                                                                                                                                                                        |
| <b>Meeting Date:</b> | 2/21/2023                                                                                                                                                                                                                                                                                                                     |
|                      | <u>Recommendation:</u> Authorize the City Manager to execute the Non-Exclusive License Agreement between the City of Milpitas and Crown Castle Fiber LLC, a New York Limited Liability Company, for the installation of Small Cell Facilities on Municipal Facilities and find a CEQA exemption.                              |

### **BACKGROUND:**

Voice and data information has been transmitted using different wavelengths of electromagnetic radiation for a very long time, and over the last four decades, the ability to transfer data over the air has evolved. The newest wireless connectivity is referred to as 5G, the fifth generation of cellular wireless services. This technology can transmit and receive wireless data a capacity of 20 gigabits per second with nearly zero delay in sending and receiving information between devices. Demand for wireless broadband is expected to continue to grow exponentially over the next several years with tremendous increases in the amount of available connected devices. Traditionally, wireless antennas and equipment were primarily installed on large towers on private land and on the rooftops of buildings. In recent years, companies seek to install smaller wireless facilities in the public right of way on existing City owned utility poles, streetlights, and other infrastructure which are suited for 5G antenna placement due to their sheer numbers and locations.

Crown Castle Fiber LLC, a host provider of wireless infrastructure, has stated an interest in applying for Encroachment Permits for installation of 237 small cellular 5G node antennas upon city owned infrastructure in multiple locations in Milpitas. Their project is anticipated to begin in 2023 and carry through late 2024, however, their final network planning is not complete, so starting locations have not been determined. Crown Castle has proposed a Non-Exclusive License Agreement for the installation of their infrastructure within the City of Milpitas.

### **ANALYSIS:**

The proposed Non-Exclusive License Agreement (**Attachment**) between the City and Crown Castle Fiber LLC is recommended to allow for the installation, maintenance, perpetual use of Crown Castle owned 5G antenna nodes located on City infrastructure within the public right of way for the life of that City infrastructure. The agreement does not require the City to replace retired infrastructure in the public right-of-way. The installation of such equipment will be in conformance with city specifications and design standards for such equipment installed on city infrastructure. As allowed by State law, the term of the agreement is for ten-years with up to three successive five-year renewals. The agreement also establishes an annual rental payment for use of City property. The initial rent payment will be \$270 per facility/per calendar year as allowed under Federal Communications Commission (FCC) order. On January 14, 2019, FCC adopted a Declaratory Ruling (FCC 18-133) that relates to a per pole fee of \$270.00 dollars, which escalates at 3% annually, that the City would receive from the applicant on a yearly basis for each location covered by a Site Supplement.

Crown Castle Fiber would also pay City Engineering plan review and permitting fees associated with issuance of City Encroachment Permits for the antenna installations. City staff and the City Attorney's Office have

reviewed the proposed agreement, and staff recommends the City Council authorize the City Manager to execute the agreement.

**POLICY ALTERNATIVE(S):**

**Alternative 1:** Do not approve the Non-Exclusive License Agreement with Crown Castle Fiber, LLC.

**Pros:** The proposed Licensed Agreement includes requirements for City approval of Encroachment Permits for Crown Castle and establishes payment of the maximum annual rental fee as allowed by law for use of City infrastructure.

**Cons:** None. Recent State law and FCC Order's limit the City's ability to regulate the use of city-owned vertical infrastructure for small cell facilities and requires the City to issue permits for such installation within very short periods of time. The City can even face legal challenges for failing to act on small cell applications. The Non-Exclusive License Agreement specifies the requirements for installations, maintenance, and perpetual use of City infrastructure, includes the requirements for City review and permitting including rental fees for use of city infrastructure.

**Reason not recommended:** With the limits placed on the City's authority by federal and state laws, staff does not recommend the alternative due to the potential negative and complicating effects described above.

**FISCAL IMPACT:**

Approval of the Crown Castle Non-Exclusive Agreement for installation of new wireless communications facilities on City infrastructure will generate revenue for each installation. In addition, Crown Castle will pay City costs for plan review, permitting, and for construction inspection for the review of equipment installed.

**California Environmental Quality Act (CEQA):**

Categorically Exempt. The project is categorically exempt in accordance with Section 15303 (New Construction or Conversion of Small Structures) Class 3 - Construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The proposed project would not have a significant effect on the environment.

**RECOMMENDATION:**

Authorize the City Manager to execute the Non-Exclusive License Agreement between the City of Milpitas and Crown Castle Fiber LLC, a New York Limited Liability Company, for the installation of Small Cell Facilities on Municipal Facilities and find a CEQA exemption.

**Attachment(s):**

Non-Exclusive License Agreement with Crown Castle Fiber LLC

**NON-EXCLUSIVE LICENSE AGREEMENT BETWEEN THE CITY OF MILPITAS,  
CALIFORNIA AND CROWN CASTLE FIBER LLC, A NEW YORK LIMITED  
LIABILITY COMPANY, FOR THE USE OF MUNICIPAL FACILITIES TO INSTALL  
SMALL CELL ANTENNAS AND ASSOCIATED EQUIPMENT**

This Agreement is made and entered into by and between the **City of Milpitas, California**, a California municipal corporation (“Licensor” or “City”) and **Crown Castle Fiber LLC** (“Licensee”). Licensor and Licensee may be referred to herein individually as a “Party” or collectively as the “Parties.”

**RECITALS**

This Agreement is made with reference to the following Recitals, each of which is deemed to be a material term and provision of this Agreement:

- A. Licensor is the owner of certain Municipal Facilities (as defined below).
- B. Licensee is Crown Castle Fiber LLC, and it is authorized to conduct business in the State of California.
- C. Licensee desires to use space on certain of Licensor’s Municipal Facilities located in the public rights of way and public utilities easements within the jurisdictional limits of the City of Milpitas to locate, place, attach, install, operate, control, and maintain Small Cell Equipment (as defined below) on Licensor’s Municipal Facilities.
- D. Licensee will agree to comply with Licensor’s requirements as provided herein.
- E. Licensee is willing to compensate Licensor in exchange for a right to use and physically occupy portions of the Municipal Facilities as provided herein.

**AGREEMENT**

**1. Definitions and Exhibits.**

1.1. Definitions. For the purposes of this Agreement and all Exhibits attached hereto, the following terms, phrases, words and derivations shall have the meaning given herein.

- (a) *Code* means Licensor’s Municipal Code.
- (b) *Hazardous Substance* means any substance, chemical or waste that is identified as hazardous or toxic in any applicable federal, state or local law or regulation, including but not limited to petroleum products and asbestos.
- (c) *Infrastructure* means any and all forms of existing power supply, conduit, or other form of infrastructure fixtures or equipment for the delivery of power or communication

services to a Municipal Facility or otherwise located in the public right of way or other location controlled or owned by Licensor.

(d) *Interference* means physical interference and radio frequency interference.

(e) *Laws* means any and all applicable federal, state or local statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, permits, approvals or other applicable requirements of the Licensor or other governmental entity or agency (including the Federal Communications Commission (“FCC”) or any successor agency) having joint or several jurisdiction over the parties to this Agreement as such laws may be amended from time to time.

(f) *Make-Ready Work* means the work required on or in a Municipal Facility to create space for the Small Cell Equipment, and/or replacing and/or reinforcing the existing Municipal Facility to accommodate Small Cell Equipment including, but not limited to, rearrangement or transfer of existing Small Cell Equipment and the facilities of other entities, and Municipal Facility relocation and replacement if applicable.

(g) *Municipal Facilities* means City-owned structures and Infrastructure located within the PROW and public utility easements that are designated or approved by Licensor as being suitable for placement of Small Cell Equipment including but not limited to those Licensor-owned streetlights defined in Section X-1-3.04 of the Code, traffic light poles, and other similar structures. The term includes Replacement Poles as defined in Section 6 below.

(h) *Permit* means a permit issued under the Code, which includes zoning and land use planning permits such as conditional use permits, and those permits that monitor and control improvement, construction or excavation activities, or other work or activity, occurring upon or otherwise affecting the City PROW or public utility easements.

(i) *Physical interference* means where equipment, vegetation or a structure causes reduced use of another’s prior mounted equipment, or an obstruction in a necessary line-of-sign path.

(j) *PROW* (or public right-of-way) shall mean the right-of-way of any street, as defined in the California Vehicle Code used by the general public, owned and/or controlled by the City and part of the City system of streets located within the territorial limits of the City.

(k) *Radio frequency interference* means the radiation or conduction of radio frequency energy (or electronic noise) produced by electrical and electronic devices at levels that interfere with the operation of adjacent equipment.

(l) *Site Supplement* means each separate site license authorization granted by Licensor, pursuant to Section 2 below, and substantially in the form shown on Exhibit A, which shall be subject to the terms and conditions of this Agreement.

(m) *Small Cell Equipment* means compact communications antennas,

transmitters, wires, fiber optic cables and other wireless communications equipment (in addition to control boxes, cables and conduit power sources) utilizing small cell technology in compliance with applicable FCC requirements that is used to provide wireless communications, and is specifically identified and described in Exhibit 1 attached to each approved Site Supplement (as defined below).

(n) *Term* means the period that this Agreement is in effect as described in Section 3.1 of this Agreement.

1.2. Exhibits. The following numbered documents, which are occasionally referred to in this Agreement, are formally incorporated and made part of this Agreement by this reference:

- (a) Exhibit A: Site Supplement.
- (b) Exhibit B: Minimum Limits of Insurance.

In the event of any conflict or ambiguity between this Agreement together with the above-referenced exhibits, and any approved Site Supplement, the approved Site Supplement (but only with respect to the subject matter addressed therein) shall govern and prevail.

## 2. License Grant and Terms.

2.1. Scope. Licensor, acting as the owner of Municipal Facilities in the PROW and public utility easements, does hereby grant to Licensee a nonexclusive license to use the Municipal Facilities identified in Exhibit 1 to each approved Site Supplement to attach install, operate, maintain, remove, reattach, reinstall, and replace the Small Cell Equipment identified Exhibit 1 to each such Site Supplement. This grant is subject to the terms, conditions and other provisions set forth in this Agreement. Licensee may place its attachments on any parts of Licensor's Municipal Facilities consistent with the City's most recent version of the Small Cell design guidelines and the Engineering Department's Procedures and Guidelines.

2.2. Use of Licensor Municipal Facilities. An approved Site Supplement allows Licensee to access, occupy and use allocated available space on each of the identified Municipal Facilities in Exhibit 1 to the corresponding Site Supplement to attach, install, operate, maintain, upgrade, remove, reattach, reinstall, relocate and replace the Small Cell Equipment, as identified in such Exhibit 1. Licensee shall have access to the Municipal Facilities upon which Small Cell Equipment is installed 24 hours a day, 7 days a week, subject to the permit requirements as set forth in paragraph 5 of this agreement and the following sentence. In accordance with City's Municipal Code requirement, construction operations, including material deliveries are limited to the hours of 7 a.m. to 7 p.m. 7 days a week. Further, no construction operations are permitted on City Holidays including New Year's Day; Martin Luther King's Birthday; Cesar Chavez Day; Memorial Day; July 4<sup>th</sup> Independence Day; Labor Day; Veteran's Day; Thanksgiving including the day after; Christmas Eve, Christmas Day.

2.3 Limitations on Use. Except as otherwise expressly provided herein, the Site Supplement does not authorize Licensee to:

- (a) Install, occupy or use any City-owned poles, improvements or structures of any

kind, whether within or without the PROW, other than the items identified as Municipal Facilities shown in Exhibit 1 attached to an approved Site Supplement;

(b) Enter upon the PROW or public utility easements and attach, install, operate, maintain, upgrade, remove, reattach, reinstall, relocate, and/or replace any item of Small Cell Equipment in or on new or existing poles or other structures located within the PROW or public utility easements and not owned by Licensor; and

(c) Install, operate and maintain ground based, pad mounted equipment cabinets and/or power pedestals needed for the operation of Small Cell Equipment attached to any of the Municipal Facilities, unless approved by Licensor because it would not be technically feasible for Licensee to omit ground based equipment or power pedestal.

2.4 Alterations/Unauthorized Equipment. Licensee represents that it will not install unauthorized equipment. If Licensee proposes to install equipment which is different in any material way from the then-existing and approved Small Cell Equipment, then Licensee shall first apply for and obtain permit approval for the use and installation of the unauthorized equipment from the Licensor (Engineering Director/City Engineer) via a new or amended Site Supplement. In addition to any other submittal requirements, and if requested by Licensor, Licensee shall provide “load” (structural) calculations for all Municipal Facilities upon which it intends to attach Small Cell Equipment or modify approved Small Cell Equipment in the PROW or public utility easements. Notwithstanding the foregoing, Licensee may modify its Small Cell Equipment with like-kind Small Cell Equipment without prior written approval of the Licensor including, without limitation, substitution of internal components that does not result in any change to the external appearance, dimensions, pole attachment type or mechanism, or weight of the attachment or that involves replacement with an attachment that is substantially the same, or smaller in weight and dimensions as the approved attachment. Licensee’s failure to comply with these limitations will constitute a material breach of the applicable Site Supplement. For unauthorized equipment that Licensee cannot demonstrate, within 30 days after receiving notice, is authorized, Licensor may impose liquidated damages in an amount not to exceed \$1,000, and in addition, Licensee shall from the date of such written notice be obligated to pay for such unauthorized equipment an amount which is three (3) times the applicable Per Pole Fee in Section 4 until the breach is cured by Licensee by removing the unauthorized equipment or applying for and obtaining a Site Supplement (or a modification to an existing Site Supplement if applicable) for such unauthorized equipment.

### **3. Term of Agreement; Cancellation; Termination; Removal or Abandonment at Expiration.**

3.1. Agreement Term. This Agreement shall be in effect for a period of ten (10) years commencing on the first day of the month following mutual execution of this Agreement (“Commencement Date”), and expiring on the day before the tenth (10<sup>th</sup>) anniversary of the Commencement Date unless sooner cancelled or terminated as provided herein (the “Initial Term”). Provided that Licensee is not in material breach of the Agreement or any Site Supplement beyond applicable notice and cure periods, the Initial Term will be extended for up to three (3), successive, five (5) year periods (each, a “Renewal Term”) with the first five year extension commencing immediately upon the expiration of the Initial Term, and each additional five year extension commencing immediately upon the expiration of the preceding Renewal Term unless

written notice of non-extension is provided by either Party to the other Party at least ninety (90) days prior to the commencement of the succeeding Renewal Term, as applicable. The Initial Term and all Renewal Terms shall be collectively referred to herein as the "Term." All of the provisions of this Agreement shall be in effect during the Term and any extension of the Term. Any holding over after the expiration of the Term shall constitute a default by Licensee, notwithstanding that Licenser may elect to accept one or more payments of fees from Licensee.

3.2 Licensee Cancellation. Licensee may cancel any Site Supplement at any time by providing the Licenser with thirty (30) days written notice of cancellation. Any prepaid fees shall be retained by Licenser. This Agreement and all Site Supplements may only be cancelled or terminated as provided in this Agreement or any Site Supplement.

3.3. Abandonment. If Licensee abandons the use of any Municipal Facility location for a period of six (6) or more consecutive months after the initial installation of Licensee's Small Cell Equipment thereon, the Small Cell Equipment for such Municipal Facilities shall be removed by Licensee at the expense of Licensee within ninety (90) days of receipt of written notice from Licenser, unless during that ninety (90) day period Licensee demonstrates to the reasonable satisfaction of Licenser that the Small Cell Equipment has not been abandoned. In the event Licensee is unable or refuses to remove such Small Cell Equipment when requested by Licenser or demonstrate to Licenser's reasonable satisfaction that it has not been abandoned, Licenser may authorize removal and Licensee shall be responsible for payment of all actual costs incurred by Licenser for such removal within thirty (30) days of written demand.

3.4 Performance Bond. In order to secure the performance of its obligations under this Agreement, Licensee will provide the following security instrument to the Licenser:

(a) Prior to the commencement of any work under this Agreement or any applicable Site Supplement, Licensee must provide a performance bond running to the Licenser in the sum of \$50,000 for the first twenty-five Site Supplements, and an additional \$50,000 to cover up to an additional twenty-five Site Supplements, and so on. The maximum surety amount shall be capped at \$500,000 regardless of the number of Site Supplements. The performance bond is conditioned upon the faithful performance by Licensee of all the terms and conditions of this Agreement and upon the further condition that, if Licensee fails to comply with any terms or conditions governing this Agreement beyond applicable notice and cure periods, there shall be recoverable jointly and severally from the principal and surety of the bond any damage or loss suffered by the Licenser as a result, including, without limitation, the full amount of any compensation, indemnification, or costs of removal or abandonment of Licensee's property, plus costs and reasonable attorneys' fees up to the full amount of the performance bond. Licensee shall keep the performance bond in place during the term of this Agreement and for twelve (12) months following termination or expiration of the Agreement. The bond forms shall be in a form approved by the City Attorney. Upon completion of Licensee's removal obligations hereunder, Licensee may terminate the performance bond and Licenser shall cooperate with Licensee in connection with such termination.

(b) Assessment of the Bond. The performance bond may be assessed by the Licenser for any failure by Licensee to pay Licenser an amount owed under this Agreement beyond applicable notice and cure periods, including, but not limited to:

(i) Reimbursement of costs borne by the Licensor to correct violations of the Agreement not corrected by Licensee, after Licensor provides notice and a reasonable opportunity to cure such violations. This shall include, without limitation, removal of Equipment.

(ii) Providing monetary remedies or satisfying damages assessed against Licensee due to a material breach of this Agreement.

(c) Restoration of the Bond. Licensee must deposit a sum of money or a replacement instrument sufficient to restore the performance bond to its original amount within thirty (30) days after written notice from the Licensor that any amount has been recovered from the performance bond and the reasons therefor. Failure to restore the bond to its full amount within thirty (30) days will constitute a material breach of this Agreement. Licensee will be relieved of the foregoing requirement to replenish the bond during the pendency of an appeal from the Licensor's decision to draw on the performance bond.

(d) Costs of Collection. If the performance bond is drawn upon, all of Licensor's reasonable costs of collection and enforcement of the provisions relating to the bond that are specified in this Section 3.4, including reasonable attorneys' fees and costs, will be paid by Licensee.

(e) Required Endorsement. The performance bond is subject to the approval of the Licensor and must contain the following endorsement:

*"This bond may not be canceled until sixty (60) days after receipt by the City of Milpitas, by registered mail, return receipt requested, of a written notice of intent to cancel or not to renew."*

(f) Reservation of Licensor Rights. The rights reserved by Licensor with respect to the performance bond are in addition to all other rights and remedies Licensor may have under this Agreement or any other Law.

(g) Admitted Surety Insurer. The surety supplying the bond shall be an "admitted surety insurer", as defined in California Code of Civil Procedure Section 995.120 and authorized to do business in the State of California.

(h) Cash Deposit. In lieu of obtaining a performance bond, Licensee shall have the right to instead deposit a cash deposit with Licensor securing Licensee's obligations under this Agreement.

4. **Fees and Charges.** Licensee shall be solely responsible for the payment of all costs, fees and charges in connection with Licensee's performance under this Agreement, including those set forth as follows:

4.1 License Fee. Licensee acknowledges that the FCC has adopted a Declaratory Ruling (FCC 18-133) that relates to the per pole fee and went into effect on January 14, 2019. Paragraphs 4.1, 4.2, 4.3, 4.4 and 4.5 govern the calculation of the per pole fee and how it may be impacted by the Declaratory Ruling.

4.2 During any period in which the FCC Declaratory Ruling (FCC 18-133) is in effect

and during any period in which the Alternate Per Pole Fee provisions in paragraph 4.3 are not applicable, the Licensee shall pay the Per Pole Fee as described in this paragraph. Licensee shall pay to the Licensor the base amount of two hundred seventy dollars (\$270.00) per calendar year for each location covered by a Site Supplement. Any new Site Supplements entered into during a given year shall commence at the per pole fee, as adjusted by Section 4.4 to reflect the then-current rate (the "Per Pole Fee"). The Per Pole Fee for the first calendar year of a Site Supplement for each location shall be pro-rated based on the number of days covered from the Site Supplement Effective Date to December 31. There shall be no refunds of the Per Pole Fee paid due to the termination or expiration of the Agreement for any reason.

4.3 In the event the relevant provisions of the FCC Declaratory Ruling that hold that fair and reasonable compensation for use of local government-owned structures in the ROW must be cost-based cease to be effective, (for example, because they are stayed after having gone into effect, or they are vacated or invalidated and have not been replaced by the FCC with an alternative provision setting a specific amount as the Per Pole Fee), the Per Pole Fee will adjust to the rate of fifteen hundred dollars (\$1,500.00) per calendar year for each location covered by a Site Supplement, as adjusted by Section 3.4 to reflect the then-current rate ("Alternate Per Pole Fee"). Additionally, Licensee shall automatically be required to pay the Alternate Per Pole Fee in full for the remainder of the Term. Any new Site Supplements entered into during a given year shall commence at the Alternate Per Pole Fee, as adjusted by Section 4.4 to reflect the then-current rate. Alternate Per Pole Fee for the first calendar year of a Site Supplement for each individual location shall be pro-rated based on the number of days covered from the Site Supplement Effective Date to December 31. There shall be no refunds of the Alternate Per Pole Fee paid due to termination of the Agreement for Licensee's default. The Licensor agrees that irrespective of whether the relevant provisions of the FCC Declaratory Ruling cease to be effective, no Alternate Per Pole Fee shall be due for any periods during which the FCC Declaratory Ruling's requirement that fair and reasonable compensation for use of local government-owned structures in the ROW must be cost-based is in effect.

4.4 Per Pole Fee and Alternate Per Pole Fee Escalator. Effective on January 1, and continuing annually thereafter during the Term, the Per Pole Fee or Alternate Per Pole Fee, as applicable, shall increase three percent (3%).

4.5 The amount to be paid with respect to each year of the Term ("Aggregate Annual License Fee") will be calculated based on an amount equal to the sum of the number of (a) Municipal Facilities upon which Small Cell Equipment was installed, and (b) Municipal Facilities which were not initially installed but contained Small Cell Equipment, during the preceding 12 months multiplied by the then-current Per Pole Fee or Alternate Per Pole Fee; provided, however, and notwithstanding the foregoing to the contrary, the Aggregate Annual License Fee shall be prorated with respect to each Municipal Facility for any months during which the applicable Site Supplement was not in force. The first Aggregate Annual License Fee after the Commencement Date is due and payable in arrears and not later than 45 days after receipt of an invoice from Licensor. Thereafter, the Aggregate Annual License Fee is due and payable each year in advance (based on the number of Municipal Facilities upon which Small Cell Equipment was installed at the end of the prior year) of January 1 of the following year. The first Aggregate Annual License Fee after the Commencement Date shall be prorated from the Commencement Date to December 31 of the same year. If Licensee discovers any error in the amount of compensation due, Licensee shall notify Licensor and the Parties shall work together in good faith to adjust the amount due. Licensee shall pay Licensor within 30 days after discovery of the error or undisputed determination

of the correct amount. If Licensee does not make such payment within 30 days, a ten percent (10%) latefee shall be added. Additionally, all unpaid fees shall accrue non-compounding interest on the amount due at the rate of ten percent (10%) per annum until paid in full. Upon agreement of the Parties, Licensee may pay the Aggregate Annual License Fee by electronic funds transfer and in such event, Licenser agrees to provide to Licensee bank routing information for such purpose upon request of Licensee. City shall provide Licensee a completed current Internal Revenue Service Form W-9 and state and local withholding forms if required.

4.6 One-Time Fees. The Licenser activities described in Section 4.6 are “One-Time Fees” that reimburses the Licenser for its costs associated with reviewing and approving applications to attach Small Cell Equipment on identified Municipal Facilities located in the PROW, this Agreement and Site Supplements to this Agreement for additional locations. The Licenser shall track its time spent reviewing the Licensee submittals for Licenses, Site Supplements and associated permit activities described below, and charge its hourly rate for any time spent against a City Private Jobs Account (PJ Account) opened by Licensee and funded at an initial deposit amount of \$5,000\_ to cover the cost of City plan reviews and inspections. The fee amounts shall be assessed and administered consistent with standard Licenser practice and fee schedule(s) as currently adopted and subsequently amended or replaced, in a manner consistent with applicable law.

4.6.1 Permit Fees. Licensee shall be responsible for paying all actual and reasonable Permit Fees using the most current City fee schedule associated with City review, processing, and inspection as part of all permit applications filed for the installation, modification, maintenance, and removal of Small Cell Equipment on identified Municipal Facilities located in the right-of-way.

4.6.2 Agreement and Site Supplement Processing Fees. Within thirty (30) days of full execution of this Agreement, Licensee shall pay a one-time fee of \$5,000 (five thousand dollars) in partial reimbursement of the costs associated with Licenser review and processing of this Agreement. Further, Licensee shall be responsible for paying all costs associated with Licenser review and processing of any Site Supplements thereto (or any amendment thereto) and/or the other administrative review related to the administration of the Agreement. These costs may be separately billed by Licenser or reimbursed from the Private Jobs Account opened by Licensee.

4.7 Taxes. Licensee shall pay all applicable city, county and state taxes levied, assessed, or imposed by reason of this Agreement or those related to any of Licensee’s Small Cell Equipment and/or provided services.

4.8 Electric meter. Except to the extent Licenser authorizes connection to its Infrastructure in accordance with the rules, regulations, and policies of PG&E, which authorization the Licenser shall not unreasonably withhold, Licensee shall be solely responsible for obtaining and maintaining the provision of electricity to Licensee’s Small Cell Equipment, including, but not limited to, making payments to electric utilities and installation of separate electric meters, if necessary. Licensee shall comply with all Laws and rules and regulations of the electric utility relating to installation and connection of Licensee’s Small Cell Equipment to electricity. Additionally, Licensee shall have the right, at Licensee’s sole cost, to replace existing lighting on a Municipal Facility utilized by Licensee either with LED or other form of energy saving lighting design reasonably approved by Licenser, and Licenser will own, operate, maintain and repair the

replacement lighting. If granted a choice between a pole-mounted smart meter and a pedestal-mounted meter, Licensee must choose a pole-mounted smart meter. Pedestal-mounted meters will only be allowed if no alternative is available. The electricity purveyor in the City of Milpitas is PG&E.

4.9 Payments Made. All fees and/or additional payments shall be payable to Licensor at: City of Milpitas, Engineering Department, Attn.; Engineering Director/City Engineer, 455 East Calaveras Blvd., Milpitas, CA 95035; or to such other persons or at such other places as Licensor may designate in writing. All payments shall be in lawful money of the United States of America.

5. **Additional Licenses and Permits Required by Code.** All of the Small Cell Equipment will be installed, operated and maintained by or on behalf of Licensee in accordance with applicable Laws. Licensee or its designee is required to apply for, pay required fees, and obtain all Permits required by the Code for installation of wireless communications facilities, related electrical work, and for work performed within the PROW and public utility easements, and the Small Cell Equipment must be installed and the PROW or public utility easement used according to the plans submitted by Licensee and approved by the Licensor in issuing such Permits. Execution of this Agreement or any Site Supplement does not constitute the issuance of a Permit. Nothing in this Agreement shall limit in any way Licensee's obligation to obtain any required regulatory approvals from any Licensor department, board or commission or other governmental agency that has regulatory authority over the Licensee's proposed activities involving use of the Municipal Facilities in the PROW and public utility easements and Licensee's obligation to obtain any required approvals or agreements to use Licensor property other than Municipal Facilities covered by this Agreement. All work performed pursuant to the rights granted by this Agreement is subject to the prior review and approval of the Licensor in accordance with its customary permitting procedures, including environmental clearance for each new installation in accordance with the California Environmental Quality Act (CEQA), if applicable.

6. **Basic Design and Installation Requirements for Using Municipal Facilities.** All of Licensee's construction and installation work for its Small Cell Equipment on the Municipal Facilities shall be performed at no cost and expense to Licensor and in a good and workmanlike manner and promptly completed. When Licensee and Licensor have agreed on an existing Municipal Facility location as a suitable site for Licensee's Small Cell Equipment, but the existing Municipal Facility needs to be replaced to accommodate the Small Cell Equipment, then the Site Supplement shall so specify and Licensee shall pay all costs related to replacing the Municipal Facility, including but not limited to installation of the replacement pole (the "Replacement Pole"), transfer of the streetlight fixtures, and/or other items attached to the existing Municipal Facility to the Replacement Pole, and removal and salvage of the existing Municipal Facility to the Licensor. Payment of the pole replacement costs does not provide Licensee with any ownership interest in the Replacement Pole. Licensor will be deemed to own the Replacement Pole in its "AS IS" condition without any representation or warranty of any kind, provided that the Replacement Pole is installed in accordance with a Site Supplement, City Standard Details and Specifications, and passes Licensor inspection. The installation or attachment of the Small Cell Equipment using the Replacement Pole shall be at no cost and expense to Licensor.

7. **Common Conditions or Requirements Applicable to Site Supplements Issued Under this Agreement.**

7.1. Small Cell Equipment Locations. For each installation, Licensee or its designee shall submit an application with plans and specifications which shall include the seal of a licensed professional engineer for Licensor review and approval which shall, at a minimum, identify the Municipal Facility Licensee proposes to use and the basic design and location of the Small Cell Equipment. If any ground-based equipment is proposed in connection with the operation of Small Cell Equipment on an individual Municipal Facility, the request must identify the ground based equipment and the plan must also depict such equipment. Upon Licensor approval, the approved plans are inserted in Exhibit 1 attached to a Site Supplement. Any approved Site Supplement shall also include a list of approved Small Cell Equipment in Exhibit 1 to each Site Supplement. If Licensee desires to change or add new locations, Licensee will submit a proposed Site Supplement application indicating the additional Municipal Facilities that it wishes to use. One Application is required per Municipal Facility. A total of 10 applications can be submitted at the same time if the projects use the same type of equipment and are being placed on the same type of structure.

7.2. Pole Reservation. Licensee shall submit an application no later than ninety (90) days after reserving a pole through the City's automated pole reservation system, or the reservation shall be cancelled without prejudice; provided, however, the City's Director of Engineering/City Engineer shall have discretion to extend the reservation upon written request by Licensee.

7.3. Damage to Licensor Property. If Licensee damages or disturbs the surface or subsurface of any PROW, public utility easement or adjoining property, Municipal Facility, pole, streetlight fixture, traffic signal, or other public improvement, in the exercise of the rights granted through this Agreement, Licensee will promptly, at its own expense, and in a manner reasonably acceptable to Licensor, repair the damage or disturbance.

7.4. Public Emergency. In the event of an emergency or to protect the public health or safety, prior to the Licensor accessing or performing any work on a Municipal Facility on which Licensee has installed Small Cell Equipment, Licensor may require Licensee to deactivate such Small Cell Equipment if any of Licensor's employees or agents must move closer to the Small Cell Equipment than the FCC recommended minimum distance. In such case, Licensor will attempt to contact Licensee at Licensee's Network Operations Center at 800-264-6620 to request immediate deactivation. Further, Licensee shall install a disconnect device at each Municipal Facility on which it installs Small Cell Equipment pursuant to a Site Supplement so that in case of emergency or to protect the public health or safety where Licensee is not able to immediately deactivate the Small Cell Equipment, Licensor may disconnect such Small Cell Equipment from its power source and safely shut it down. In the event of an unplanned power outage or other unplanned cut-off of power, or an emergency, the power-down will be with such advance notice as may be practicable. In all instances, once the work has been completed and the worker(s) have departed the exposure area, the party who accomplished the power-down shall restore power and inform Licensee as soon as possible at Licensee's Network Operations Center number provided above that power has been restored.

7.5. Make-Ready Work.

(a) Make-Ready Work and Costs. Licensee shall bear responsibility for all Make-Ready Work. If a Person other than Licensee or Licensor would have to rearrange or adjust any of its facilities in order to accommodate new Small Cell Equipment, Licensee shall be responsible, at no expense to Licensor, to coordinate such activity. Licensee shall be responsible

for directly paying such other Person for its charges for the same. If Licensee is requested by another Person, in comparable circumstances, to relocate or adjust any Small Cell Equipment to accommodate that Person's facilities, subject to Licensor's written approval of such relocation, Licensee shall reasonably cooperate with such request. Licensor shall endeavor to include the requirements of this subsection (a) or substantially equivalent language in Licensor's agreements with other licensees of a Municipal Facility.

(b) Construction, installation, and operation of the Small Cell Equipment shall be conditioned on the completion of all Make-Ready Work needed to establish full compliance with the National Electrical Safety Code ("NESC"), and with Licensor's regulatory rules and engineering standards and requirements; provided, however, that Licensee shall not be responsible for any third-party or Licensor costs necessary to correct third party or Licensor attachments that are non-compliant.

(c) Notification of Completion of Installation. Within thirty (30) business days of completing the installation of Small Cell Equipment on each Municipal Facility, Licensee shall notify Licensor of such completion.

#### 7.6. Pole Replacement.

(a) Subject to Section 7.6(f), if a Municipal Facility needs replacement or repair due to a traffic accident or deterioration, Licensee shall have the right to immediately replace the same at Licensor's reasonable cost, not to exceed the charges the City would normally have incurred from its third-party vendor. In such event, Licensor shall reimburse Licensee within thirty (30) days of Licensee's receipt of an invoice. However, in the event Licensee elects in writing to have Licensor replace the Municipal Facility, Licensor shall perform such replacement within thirty (90) days or as soon as practicable as determined by Licensor thereafter, and Licensee shall cooperate with Licensor to temporarily relocate its Small Cell Equipment, if necessary. Upon completion of the replacement, Licensor shall notify Licensee in order for Licensee to install its Small Cell Equipment. Licensor shall retain ownership of the Replacement Pole.

(b) At Licensee's option, Licensee may provide to Licensor, at no cost to Licensor, a spare pole sufficient to serve as a Replacement Pole, which will be stored at Licensor's Public Works Yard (the "Yard") at no cost to Licensee, and which will be available for use by Licensor and Licensee to replace the Municipal Facility as provided in this Section 7.6.

(c) In the event Licensee provides a spare pole, and elects in writing to have Licensor perform the replacement, Licensor will use the spare pole to replace the damaged existing pole within thirty (60) days of notice of the need for the replacement or as soon as practicable as determined by Licensor, and shall deliver the damaged pole and any damaged Small Cell Equipment to the Yard. In such an event, Licensor shall have ownership of the Replacement Pole.

(d) Licensor will contact Licensee to pick up the damaged Small Cell Equipment and Licensee can reinstall its Small Cell Equipment once the Replacement Pole is installed and functioning as a Municipal Facility.

(e) Licensee shall have the right to temporarily use a Municipal Facility for its

operation during the replacement period at a location reasonably acceptable to both Licensor and Licensee.

(f) In the event Licensor is responsible for replacing the Municipal Facility with a Replacement Pole, Licensor shall only be responsible for the cost of a standard pole, and Licensee shall be responsible for the cost of the Replacement Pole in excess of the cost of a standard pole.

#### 7.7. Removal and Relocation.

(a) Licensee understands and acknowledges that Licensor may require Licensee to relocate one or more of its Small Cell Equipment installations as provided in this Section 7.7(a). Licensee shall at Licensor's direction and upon thirty days (30) prior written notice to Licensee, relocate such Small Cell Equipment at Licensee's sole cost and expense whenever Licensor reasonably determines that the relocation is needed for any of the following purposes: (i) if required for the construction, modification, completion, repair, relocation, or maintenance of a Licensor infrastructure or other public agency project; or (ii) Licensor is abandoning or removing the Municipal Facility. Licensor may also require Licensee to relocate one or more of its Small Cell Equipment installations where the Small Cell Equipment is interfering with or adversely affecting proper operation of Licensor-owned Poles, traffic signals, communications, or other Municipal Facilities. In the event of such interference, Licensee shall at Licensor's direction and upon thirty (30) days prior written notice to Licensee, relocate the interfering Small Cell Equipment at Licensee's sole cost and expense.

(b) In any such case, Licensor shall use reasonable efforts to afford Licensee a reasonably equivalent alternate location. Licensee acknowledges that if Licensor is permanently removing the Municipal Facility due to an undergrounding project, Licensee may be required to seek an appropriate alternate location within the PROW. Nothing in this Agreement gives the Licensee the authorization to install a new dedicated pole in the PROW or public utility easement as a result of any relocation requirement. If Licensee shall fail to relocate any Small Cell Equipment as requested by the Licensor in accordance with the foregoing provision, Licensor shall be entitled to remove or relocate the Small Cell Equipment at Licensee's sole cost and expense, without further notice to Licensee. Licensee shall pay to the Licensor actual costs and expenses incurred by the Licensor in performing any removal work and any storage of Licensee's property after removal within thirty (30) days of the date of a written demand for this payment from the Licensor accompanied by supporting documentation.

(c) In the event Licensee desires to relocate any Small Cell Equipment from one Municipal Facility to another, Licensee shall so advise Licensor. Licensor will use reasonable efforts to accommodate Licensee by making another reasonably equivalent Municipal Facility available for use in accordance with and subject to the terms and conditions of this Agreement.

(d) In lieu of the relocation of Licensee's Small Cell Equipment in the case of an abandonment of a Municipal Facility as provided in Section 7.7(a)(ii), unless the Municipal Facility is needed for a legitimate Licensors purpose, Licensors may, in its sole discretion, allow Licensee to purchase the Municipal Facility, and continue to use the same pursuant to the then existing Site Supplement, at a commercially reasonable price commensurate with its then existing value. Licensee and Licensors shall document any such transfer of ownership via a bill of sale. In the event that Licensee acquires a Municipal Facility pursuant to this Section 7.7(c), no Per Pole Fee shall be due or payable with respect to such acquired site and said fee shall be prorated in accordance with Section 3 above.

7.8. Non-exclusiveness. The rights and privileges granted to Licensee under this Agreement, and each Site Supplement described herein, are nonexclusive.

7.9. Non-interference. The following provisions shall apply to ensure and/or avoid interference (both physical interference and radio frequency interference) resulting from Licensee's installation, operation and/or maintenance of its Small Cell Equipment:

(a) RF Interference. Consistent with applicable Laws, Licensee shall ensure that the Small Cell Equipment will not cause radio frequency interference with wireless communication facilities or devices, cable television, broadcast radio or television systems, or satellite broadcast systems existing at the time of installation of the Small Cell Equipment. Further, Licensee shall ensure that the Small Cell Equipment will not cause any radio frequency interference with Licensors traffic signal equipment, public safety, or other communications equipment existing at the time of installation of the Small Cell Equipment.

(b) Primary and Existing Uses. Licensee acknowledges and agrees that the primary purpose of the Municipal Facilities is to serve the public. Licensors has the right, but not the obligation, to maintain and operate its Municipal Facilities in such reasonable manner as will best enable Licensors to fulfill its own primary service requirements or facilities. Licensors is willing to permit the installation of Licensee's Small Cell Equipment on Municipal Facilities only where such use will not interfere with the existing and future primary service requirements and facilities, or the existing uses (other than primary service requirements) of Licensors and existing uses of others authorized to use the Municipal Facility as of the date of the applicable Site Supplement. Licensee shall not materially interfere in any manner with the primary service requirements and existing uses of the Municipal Facilities or other Licensors property including PROW and public utility easements, and including sanitary sewers, water mains, storm drains, gas mains, poles, Fiber Optic cables, aerial and underground electric and telephone wires, streetlight fixtures, traffic signal and camera systems, cable television, and other telecommunications, utility, and municipal property without the written approval of the owner(s) of the affected property or properties. Notwithstanding the foregoing, Licensors will not grant after the date of this Agreement a right to use a Municipal Facility to any third party if, at the time such third party applies to use a Municipal Facility, Licensors knows that such third party's use may cause interference with the Licensee's existing Small Cell Equipment, Licensee's use of the Municipal Facility, or Licensee's ability to comply with the terms and conditions of this Agreement. Licensors shall endeavor to include the requirements of Sections 7.9(a) and (b) or substantially equivalent language in Licensors's agreements with other licensees of a Municipal Facility.

(c) Licensor Communications. Licensee shall not materially interfere in any manner with current or future Licensor public safety communication.

(d) Licensor Interference from New Non-Primary Uses. Licensor has the right, but not the obligation, to add new non-primary uses to its Municipal Facilities (that is, Licensor uses not covered by (a) through (c)). Notwithstanding the foregoing sentence, if Licensee reasonably determines that a new non-primary use of a Licensor Municipal Facility is causing interference with Licensee's existing Small Cell Equipment on the same Licensor Municipal Facility, then Licensor will confer with Licensee upon receipt of notice of interference from Licensee, and otherwise work in good faith with Licensee to determine the root cause of the interference, develop workable solutions to resolve the interference in a mutually acceptable manner, and determine which party will cover the costs of implementing the solution.

(e) Remedies. Without limiting any other rights or remedies, if interference caused by Licensee's Small Cell Equipment or by Licensor's new non-primary use occurs and continues for a period in excess of 24 hours following notice to the interfering party via telephone to Licensee's Network Operations Center at 800-264-6620 or to Licensor at (Office of the City of Milpitas Engineering Director/City Engineer) at 408-586-3301, the interfering party shall or shall require any other user to reduce power or cease operations of the interfering equipment until the interference is cured unless the Licensor determines the equipment causing interference is required to remain energized for legitimate public safety reasons. The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this Section 6 and therefore the Parties shall have the right to equitable remedies such as, without limitation, injunctive relief and specific performance.

8. Damage to Licensee's Small Cell Equipment. In the event of any damage to Licensee's Small Cell Equipment, Licensor shall have no liability or responsibility to repair the same unless such damage arose from the negligence or willful misconduct of Licensor, its employees, agents, or contractors; provided however, in such case, Licensor's liability shall be limited to the cost to repair or replace the same.

9. Title and Ownership.

9.1 Title to the Small Cell Equipment. Title to the Small Cell Equipment, exclusive of the Municipal Facility (original or replacement) used for support, shall remain with Licensee or its Carriers (defined below) and shall constitute Licensee's personal property and equipment, and not fixtures or improvements attached to the land.

9.2 No Ownership in Licensor Property. Neither this Agreement, nor any license issued herein, nor any Permit separately issued for installation of any Small Cell Equipment, regardless of the payment of any fees and charges, shall create or vest in Licensee any ownership or property rights in any portion or elements of the Municipal Facilities, the underlying real property on which any Licensor-owned poles or any Small Cell Equipment is located, or any portion of the PROW or public utility easements. Additionally, except as otherwise expressly provided herein, Licensee acknowledges that this Agreement does not constitute or create a leasehold interest or right to the benefit of any Licensor property or portion thereof. Nothing contained in this Agreement shall be construed to compel Licensee to construct, retain, extend, place, or maintain any poles or other facilities

for the benefit of Licensor which are not needed for Licensee's own service requirements.

9.3 **"As Is" Condition.** Subject to Section 9, Licensee accepts the Municipal Facilities identified in any Site Supplement, or any Replacement Pole, in its "AS IS" condition, without representation or warranty of any kind by Licensor, or any Licensor officer, agent, or employee as to the present or future condition of or suitability of the Municipal Facilities for Licensee's intended use, and subject to all applicable laws, rules and ordinances governing the use of the Municipal Facilities for Licensee's intended purpose. Licensor disclaims any and all warranties express or implied with respect to the physical, structural, or environmental condition of the Municipal Facilities and the merchantability or fitness for a particular purpose. Licensee is solely responsible for investigation and determination of the condition and suitability of any Municipal Facility for Licensee's intended use.

10. **Maintenance and Repair.** Subject to Section 7.3, Licensor shall maintain and keep the Municipal Facility containing Small Cell Equipment in good condition and in accordance with Licensor's standard maintenance requirements and design standards, at its sole cost and expense. Licensee shall keep the Small Cell Equipment and other improvements by Licensee on the Municipal Facility, if any, in good repair.

11. **Hazardous Substances.** Licensee agrees that Licensee, its contractors, subcontractors and agents, will not use, generate, store, produce, transport or dispose any Hazardous Substance on, under, about or within the area of a Municipal Facility or the PROW or public utility easement in which it is located in violation of any applicable federal, state, county, or local law or regulation. Except to the extent of the negligence or intentional misconduct of Licensor, Licensee will pay, indemnify, defend and hold Licensor harmless against and to the extent of any loss or liability incurred by reason of any Hazardous Substance produced, disposed of, or used by Licensee pursuant to this Agreement. Licensee will ensure that any on-site or off-site storage, treatment, transportation, disposal or other handling of any Hazardous Substance will be performed by persons who are properly trained, authorized, licensed and otherwise permitted to perform those services. Notwithstanding the foregoing, Licensee shall not be liable for Hazardous Substances that existed within the area of a Municipal Facility or the PROW or public utility easement in which it is located before the execution of this Agreement, or that otherwise do not result from the activities of Licensee, its agents, contractors, subsidiaries, or entities otherwise associate with Licensee.

12. **Indemnity.** To the fullest extent permitted by law, Licensee shall indemnify, defend, and hold harmless Licensor, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, reasonable attorneys' fees, disbursements and court costs) of every kind and nature whatsoever (collectively, "Claims") which relate to (i) Licensor's approval of this Agreement and any Site Supplement(s), and (ii) Licensee's, and its employees', contractors', agents' or Carriers', construction, operation, use, or related activity taken pursuant to this Agreement; provided, however, the foregoing indemnity shall not apply to the extent such Claims are the result of the negligence or willful misconduct of Licensor. This indemnification shall include, but not be limited to, damages awarded against Licensor, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Licensee, Licensor, and/or the parties initiating or bringing such proceeding. Licensee shall indemnify Licensor for all of Licensor's costs, reasonable attorneys' fees, and damages which Licensor incurs in enforcing the indemnification provisions set forth in this condition. Licensee shall pay to Licensor within 30 days

after receipt of an invoice or, as applicable, to counsel of Licensor's choosing, any amount owed pursuant to the indemnification requirements prescribed herein. This shall not include any costs Licensor incurs for hiring their own counsel to participate in the defense in addition to the counsel retained provided by Licensee.

### 13. **Insurance Requirements.**

13.1. Licensee's Insurance. Licensee shall procure and maintain insurance in the amounts and form specified in attached Exhibit B.

13.2. Certificates. If a Certificate of Insurance or Self-Insurance is submitted as verification of coverage, Licensor will reasonably rely upon the Certificate as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the required policies expire during the life of this Agreement, Licensee must forward renewal or replacement Certificates to Licensor within fifteen (15) business days after the renewal date containing all the necessary insurance provisions.

### 14. **Assignment/Subletting.**

14.1. Except as expressly provided herein, this Agreement and each site license granted pursuant to individual Site Supplements herein is personal to Licensee and for Licensee's use only. Licensee shall not lease, sublicense, share with, convey or resell to others any such space or rights granted hereunder; provided, however, the Parties agree and acknowledge that, notwithstanding anything in this Agreement to the contrary, certain Small Cell Equipment deployed by Licensee on any Municipal Facility or in any PROW or public utility easement pursuant to this Agreement may be owned and/or operated by Licensee's third-party wireless carrier customers ("Carriers") and installed and maintained by Licensee pursuant to license agreements between Licensee and such Carriers. Such Small Cell Equipment shall be treated as Licensee's Small Cell Equipment for all purposes under this Agreement provided that (i) Licensee remains responsible and liable for all performance obligations under the Agreement with respect to such Small Cell Equipment; (ii) Licensor's sole point of contact regarding such Small Cell Equipment shall be Licensee; and (iii) Licensee shall have the right to remove and relocate the Small Cell Equipment. This Agreement and the related rights, duties, and privileges may not be assigned or otherwise transferred in whole or in part without the prior written consent of Licensor; provided, however, Licensee shall have the right to assign this Agreement upon notice to Licensor but without Licensor's consent to any parent, subsidiary, affiliate, or any person, firm, or corporation that shall control, be under the control of, or be under common control with Licensee, or to any entity into which Licensee may be merged or consolidated or which purchases all or substantially all of the assets of Licensee that are subject to this Agreement. If the Agreement is assigned or otherwise transferred in accordance with this Section, this Agreement, including any amendments, shall be binding on the assignee to the full extent that it was binding upon Licensee.

14.2. Any non-permitted transfer or assignment of the right to attach Small Cell Equipment to a Municipal Facility shall be void and not merely voidable. Licensor may, in its sole discretion and in addition to all other lawful remedies available to Licensor under this Agreement, may collect any fees owed from Licensee all without prejudicing any other right or remedy of Licensor under this Agreement. No cure or grace periods shall apply to transfers or assignment prohibited by this Agreement or to the enforcement of any provisions of this Agreement against a transferee or assignee who did not receive Licensor's consent.

15. **Default.** It is a “Default” if (i) either Party fails to materially comply with this Agreement or any Site Supplement and does not remedy the failure within thirty (30) days after written notice by the other Party or, if the failure cannot reasonably be remedied in such time, if the failing Party does not commence a remedy within the allotted thirty (30) days and diligently pursue the cure to completion within ninety (90) days after the initial written notice, or (ii) Licensee fails to comply with this Agreement or any Site Supplement and the failure interferes with Licensor’s use of its Municipal Facility in a manner not covered by Section 7.4, and Licensee does not remedy the failure within twenty (20) days after written notice from Licensor or, if the failure cannot reasonably be remedied in such time, if Licensee does not commence a remedy within the allotted twenty (20) days and diligently pursue the cure to completion within thirty (30) days after the initial written notice.

16. **Termination/Revocation.** In the event of a Default, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such Default, the non-defaulting Party may terminate this Agreement if the Default affects all Site Supplements and the Agreement as a whole, or any Site Supplement subject to the Default, and/or pursue any remedy now or hereafter available to the non-defaulting Party under the Laws or judicial decisions of the State of California.

17. **Surrender.** Within one hundred eighty (180) days of the expiration or earlier termination of this Agreement or upon ninety (90) days of the expiration or termination of an individual Site Supplement, Licensee shall remove the affected Small Cell Equipment, at no expense to Licensor, shall repair any damage to the Municipal Facilities or the PROW or public utility easement caused by such removal, and shall restore the Municipal Facilities to the condition in which they existed prior to the installation of the Small Cell Equipment, reasonable wear and tear and loss by casualty or other causes beyond Licensee’s control excepted.

18. **Notices.** Any notice, request, demand, statement, or consent herein required or permitted to be given by either party to the other hereunder, shall be in writing signed by or on behalf of the party giving the notice and addressed to the other at the address as set forth below:

Licensee  
 Crown Castle Fiber LLC  
 2000 Corporate Drive  
 Canonsburg, PA 15317  
 Attn: Ken Simon, General Counsel

With a copy to:  
 Crown Castle Fiber LLC  
 2000 Corporate Drive  
 Canonsburg, PA 15317  
 Attn: SCN Contracts Management

24/7 emergency contact information:  
 Telephone: (888) 632-0931  
 E-Mail: SCN.NOC@crowncastle.com

Licensor

City of Milpitas  
 455 East Calaveras Blvd.  
 Milpitas, CA 95035  
 Attn: Steven G. McHarris, City Manager  
 Telephone: (408) 586-3059  
 E-Mail: smcharris@milpitas.gov

With a copy to:

City of Milpitas  
 455 East Calaveras Blvd.  
 Milpitas, CA 95035  
 Attn: Steve Chan, Interim City Engineer  
 Telephone: (408) 586-3324  
 E-Mail: schan@milpitas.gov

City of Milpitas  
 455 East Calaveras Blvd.  
 Milpitas, CA 95035  
 Attn: Michael Mutalipassi, City Attorney  
 Telephone: (408) 586-3041  
 E-Mail: mmutalipassi@milpitas.gov

Each Party may by notice in writing change its address for the purpose of this Agreement, which address shall thereafter be used in place of the former address. Each notice, demand, request, or communication which shall be mailed to any of the aforesaid shall be deemed sufficiently given, served, or sent for all purposes hereunder (i) five business days after it shall be mailed by United States registered or certified mail, postage prepaid and return receipt requested, in any post office or branch post office regularly maintained by the United States Postal Service, (ii) upon personal delivery, or (iii) one business day after deposit with any recognized commercial air courier or express service. Any communication made by e-mail or similar method shall not constitute notice pursuant to this Agreement.

19. **Miscellaneous.**

19.1. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties as to the subject matter herein, and supersedes all negotiations, understandings or agreements as to the same. Any amendments to this Agreement must be in writing and executed by both Parties.

19.2. Severability. 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.

19.3. Governing Law. This Agreement shall be governed by the laws of the State of California without regard to choice of law rules.

19.4. Exhibits. All Exhibits referred to and attached to this Agreement are incorporated herein by reference.

19.5. Authority to Execute. Any individual executing this Agreement on behalf of or as representative for a corporation or other person, partnership or entity, represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of such Party, and this Agreement is binding upon such Party in accordance with its terms. Licensor hereby designates, and authorizes, the Engineering Director/City Engineer to execute all Site Supplements with respect to placement of equipment within the PROW. The City Manager shall and have the responsibility for the execution of this Agreement and any amendments thereto entered into under this Agreement. This designation and authorization may be changed by Licensor upon written notice to Licensee. This Agreement may be executed in several counterparts, including by counterpart email or other electronic means, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same agreement.

19.6. No Waiver. A Party shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of a Party upon any one or more occasions to insist upon or to seek compliance with any such terms or condition

19.7. Force Majeure. With respect to any provisions of this Agreement, the violation or non-compliance of any term of this Agreement which could result in the imposition of a financial penalty, liquidated damages, forfeiture or other sanction upon a Party, such violation or non-compliance shall be excused where such violation or non-compliance is the result of acts of God, war, civil disturbance, strike or other labor unrest, or other events, the occurrence of which was not reasonably foreseeable by such Party and is beyond such Party's reasonable control.

19.8. Limitation of Liability. Neither Party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or

interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

19.9 Time is of the Essence. Time is of the essence with regard to the performance of all of Licensee's obligations under this Agreement.

19.10 Dispute Resolution.

(a) Good Faith Participation. Prior to the initiation of any litigation, the Parties shall in good faith attempt to settle any dispute arising out of or relating to this Agreement through the upper management escalation and non-binding mediation processes set forth herein. Good faith participation in these processes shall be a condition precedent to any litigation. All negotiations pursuant to this Article shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and any state's rules of evidence.

(b) Upper Management Escalation and Mediation. Either Party may give the other Party written notice of any dispute not resolved in the normal course of business. The dispute shall be escalated to upper management and, thereafter, representatives of both Parties with authority to settle the dispute shall meet at a mutually acceptable time and place within thirty (30) calendar days after receipt of such notice, and thereafter as often as reasonably deemed necessary, to exchange relevant information and attempt to resolve the dispute. If the matter has not been resolved within thirty (30) calendar days of receipt of the disputing Party's notice, which period may be extended upon mutual agreement of the Parties, or if the Parties fail to meet within thirty (30) calendar days, either Party may initiate mediation. Such mediation shall take place at a mutually agreeable location. In the event that such dispute is not resolved within ninety (90) calendar days following the first day of mediation, or mediation is not initiated, either Party may initiate litigation.

(c) Enforcement. The parties regard the aforesaid obligation to escalate to upper management and mediate as an essential and material provision of this Agreement and one that is legally binding upon them. In case of a violation of such obligation by either Party, the other may seek specific enforcement of such obligation in the courts having jurisdiction hereunder.

19.11 Successors. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of this \_\_\_\_\_ day of \_\_\_\_\_, 2023 (the “Execution Date”).

**LICENSOR:**

City of Milpitas, a California municipal corporation

**CITY OF MILPITAS**

*Approved By:*

\_\_\_\_\_  
Steven G. McHarris, City Manager

*Approved As To Form:*

\_\_\_\_\_  
Michael Mutalipassi, City Attorney

*Approved:*

\_\_\_\_\_  
Lauren Lai, CPA, MPA  
Finance Director/Risk manager

*Approved As To Content:*

\_\_\_\_\_  
Steve Chan, PE  
Interim City Engineer

**LICENSEE:**

Crown Castle Fiber LLC, a New York limited liability company

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT A**  
**Form of Site Supplement**  
**Supplement**

1. Supplement. This is a Site Supplement as referenced in that certain NON-EXCLUSIVE LICENSE AGREEMENT FOR THE USE OF CITY-OWNED MUNICIPAL FACILITIES TO INSTALL SMALL CELL ANTENNAS AND ASSOCIATED EQUIPMENT, between Licensor and Licensee dated \_\_\_\_\_, 20\_\_ ("Agreement"). This Site Supplement is approved by Licensor this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the date executed by all parties, referred herein as "Site Supplement Effective Date"). Licensee has submitted an application for a Site Supplement pursuant to the Agreement, and Licensor has reviewed the application and grants approval subject to the terms of this Site Supplement. All of the terms and conditions of the Agreement are incorporated hereby by reference and made a part hereof without the necessity of repeating or attaching the Agreement. In the event of a contradiction, modification or inconsistency between the terms of the Agreement and this Site Supplement, the terms of this Site Supplement shall govern (but only with respect to the subject matter addressed therein). Capitalized terms used in this Site Supplement shall have the same meaning described for them in the Agreement unless otherwise indicated herein. IF THE SITE SUPPLEMENT IS NOT COUNTER-SIGNED BY LICENSEE AND RETURNED TO LICENSOR WITHIN 30 DAYS AFTER LICENSOR HAS GRANTED APPROVAL, THE SITE SUPPLEMENT SHALL BE VOID AND OF NO LEGAL EFFECT. IF LICENSEE STILL WANTS TO USE THE MUNICIPAL FACILITY, LICENSEE WILL BE REQUIRED TO SUBMIT A NEW APPLICATION AND ASSOCIATED FEES.
2. Project Description and Locations. Licensee shall have the right to attach Small Cell Equipment to the designated space on the specific Municipal Facility as further described in Exhibit 1 attached hereto (the "Licensed Area").
3. Small Cell Equipment. The Small Cell Equipment to be installed at the Licensed Area is listed and depicted on plans included in Exhibit 1 attached hereto.
4. Term. The term of this Site Supplement shall be coterminous with the Agreement Term as set forth in Section 3.1 of the Agreement.
5. Fees. The initial annual Per Pole Fee or Alternate Per Pole Fee for the term of this Supplement shall be \_\_\_\_\_, as determined in accordance with the Agreement, and as adjusted by Section 4 of the Agreement.
6. Site Supplement Commencement Date. If Licensee does not commence installation of its Small Cell Equipment within one (1) year of the Site Supplement Effective Date, the Site Supplement shall be void unless Licensor, in its sole discretion, extends the time for commencing installation of Small Cell Equipment in writing.
7. Miscellaneous. \_\_\_\_\_.

[Signature page follows]

APPROVED as of the date shown below.

**LICENSOR:**

City of Milpitas, a California municipal corporation

**CITY OF MILPITAS**

*Approved By:*

---

Steve Chan, PE  
Interim City Engineer

**LICENSEE:**

Crown Castle Fiber LLC, a New York limited liability company

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

## **Exhibit 1**

### **Licensed Area, Small Cell Equipment List and Plans**

## **EXHIBIT B**

### **Licensee's Minimum Insurance Requirements**

#### **1. General.**

A. Prior to performing work under this Agreement, Licensee shall furnish Licensor a certificate of insurance on a standard insurance industry ACORD form. The insurance coverage required must be issued by an insurance Licensee licensed, authorized or permitted to transact business in the State of California, possessing a current A.M. Best, Inc. rating of A-VII or better, and coverage shall be reasonably satisfactory to Licensor.

B. The insurance requirements set forth in no way limit the indemnity covenants contained in this Agreement.

C. Licensor in no way warrants that the insurance limits contained in this Agreement are sufficient to protect Licensee from liabilities that might arise out of the performance of this Agreement by Licensee and its contractors, and Licensee is free to purchase any additional insurance as may be determined necessary.

D. Failure to demand evidence of full compliance with the insurance requirements in this Agreement or failure to identify any insurance deficiency will not relieve Licensee from, nor will it be considered a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

#### **2. Scope and Limits of Insurance.** Licensee shall provide coverage with limits of liability equal to those stated below.

A. Commercial General Liability-Occurrence Form. Licensee must maintain Commercial General Liability insurance with a limit of \$1,000,000 per occurrence for bodily injury and property damage and \$2,000,000 general aggregate including premises-operations, products and completed operations, independent contractor, contractual liability, personal injury and advertising injury.

B. Commercial Automobile Liability. Licensee must maintain Commercial Automobile Liability insurance in the amount of \$1,000,000 combined single limit each accident for bodily injury and property damage covering all of Licensee owned, hired, and/or non-owned vehicles assigned to or used in the performance of Licensee's work or activities under this Agreement.

C. Workers Compensation and Employers Liability Insurance. Licensee must maintain Workers Compensation insurance in compliance with the statutory requirements of the state of operation and Employer's Liability with a limit of \$1,000,000 for each accident; \$1,000,000 disease for each employee; \$1,000,000 disease-policy limit.

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

(1) The retroactive date must be shown, and this date must be before the execution date of the contract or the beginning of contract work.

(2) Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of contract work.

(3) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date, the Contractor must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work.

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

### **3. Additional Policy Provisions Required.**

#### **A. Miscellaneous Provisions.**

(1) Licensee's required insurance coverage must be primary insurance with respect to Licensor, its officers, officials, and employees. Any insurance or self-insurance maintained by Licensor, its officers, officials, and employees shall be in excess of the coverage provided by Licensee and must not contribute to it.

(2) Licensee's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(3) Licensee hereby agrees to waive rights of subrogation which any insurer of Licensee may acquire from Licensee by virtue of the payment of any loss. Licensee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the Licensor for all work performed by the Licensee and its employees. The policies must contain a severability of interest clause and waiver of subrogation against Licensor, its officers, officials, and employees, for losses arising from work performed by Licensee for Licensor.

(4) Licensee is required to maintain Commercial General Liability insurance as specified in this Agreement for the duration of this Agreement. Licensee must submit an annual Certificate of Insurance evidencing Commercial General Liability insurance during this period

evidencing the insurance requirement and, including the required Additional Insureds set forth herein.

(5) If a Certificate of Insurance is submitted as verification of coverage, Licensor will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement.

(6) Upon receipt of notice from its insurer, Licensee shall use its best effort to provide the Licensor with thirty (30) days prior written notice of cancellation of any required coverage that is not replaced. Such notice shall be sent directly to Licensor at 455 East Calaveras Blvd, Milpitas, CA 95035, Attn: City Manager.

B. Licensor as Additional Insured. The above-referenced policies shall, excluding workers compensation and employer's liability include the Licensor, its officers, officials, and employees as an additional insured as their interest may appear under this Agreement with respect to liability arising out of activities performed by Licensee. Licensor's additional insured status shall (i) be limited to bodily injury, for ongoing operations using ISO form CG 20 10 and completed operations using ISO form CG 20 37 or its equivalent property damage or personal and advertising injury caused, in whole or in part, by Licensee, its employees, agents or independent contractors; (ii) not extend to claims for punitive or exemplary damages arising out of the acts or omissions of Licensor, its employees, agents or independent contractors or where such coverage is prohibited by law or to claims arising out of the negligence of Licensor, its employees, agents or independent contractors; and, (iii) not exceed Licensee's indemnification obligation under this Agreement, if any.

C. Self-Insurance. Notwithstanding the foregoing, Licensee shall have the right to self-insure the coverages required herein. In the event Licensee elects to self-insure its obligation to include Licensor as an additional insured, the following additional provisions shall apply:

(i) Licensor shall promptly and no later than thirty (30) days after notice thereof provide Licensee with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide Licensee with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like;

(ii) Licensor shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Licensee; and

(iii) Licensor shall fully cooperate with Licensee in the defense of the claim, demand, lawsuit, or the like.



## CITY OF MILPITAS AGENDA REPORT (AR)

|                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Item Title:</b>   | <b>Adopt a Resolution Granting Acceptance of Alviso Adobe Renovation (Phase V – Exhibits), Project No. 5055, Authorizing the City Engineer or Other Appropriate Representative Designated by the City Manager, to File a Notice of Completion, and Authorize the City Engineer, or Other Appropriate Representative Designated by the City Manager, to Issue a Notice of Final Acceptance after the one-year warranty (Staff Contact: Michael Silveira, Capital Improvement Program Manager, 408-586-3303)</b> |
| <b>Category:</b>     | Consent Calendar-Community Services and Sustainable Infrastructure                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Meeting Date:</b> | 3/7/2023                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|                      | <u>Recommendation:</u> Adopt a Resolution granting acceptance of Alviso Adobe Renovation (Phase V – Exhibits), Project No. 5055; authorizing the City Engineer to file a Notice of Completion, and authorizing the City Engineer to issue a Notice of Final Acceptance after the one-year warranty.                                                                                                                                                                                                            |

### **BACKGROUND:**

On April 20, 2021, the City Council awarded a construction contract to Gizmo Art Production, Inc. for the Alviso Adobe Renovation Phase V- Interior Exhibits, Project No. 5055 in the amount of \$792,574 (“Project”). This final phase of the Project provides for installation of interior exhibits and visual media in the Adobe’s first floor included fabrication and installation of period furnishings, exhibits, interpretive signage, and visual media to replicate the experiences of an original Spanish-Mexican Era Adobe home.

### **Analysis:**

The Project was successfully completed on-time and within budget, and the Adobe opened to the public in October of 2022. Staff recommends the City Council adopt a Resolution (**Attachment 1**) granting acceptance of the Project and authorize the City Engineer, or other appropriate representative designated by the City Manager, to file a Notice of Completion in accordance with the provisions of Section 9204 of the Civil Code. Staff also recommends the Council authorize the City Engineer, or other appropriate representative designated by the City Manager, to issue a notice of final acceptance after the one-year warranty period without further City Council action, provided that all warranty work is completed to the satisfaction of the City Engineer, or other appropriate representative designated by the City Manager.

### **Policy Alternative:**

Alternative: Do not adopt Resolution and deny Project acceptance, deny filling a notice of completion and not begin the one-year warranty.

Pros: None

Cons: A denial would result in the City being unable to commence the one-year warranty, release the retention to the Contractor and release any funds remaining back into the Project budget.

Reason not Recommended: Denial would result in the City being unable to close out the Project and release any funds remaining back into the Project budget.

### **Fiscal Impact:**

No additional funding is requested for installation of interior exhibits and visual media as the project is now complete. Information Technology, Public Works, and Recreation and Community departments have sufficient budget for maintenance and operations of the project during fiscal Year 2022-23, but they will bring forward

request to adjust of the annual operations and maintenance of this project during the Operating Budget process for Fiscal Year 2023-24.

**California Environmental Quality Act:**

The Project has an approved Mitigated Negative Declaration.

**Recommendations:**

Adopt a Resolution granting acceptance of Alviso Adobe Renovation (Phase V – Exhibits), Project No. 5055; authorizing the City Engineer to file a Notice of Completion, and authorizing the City Engineer to issue a Notice of Final Acceptance after the one-year warranty.

**Attachment:**

Attachment 1 Resolution

**RESOLUTION NO. \_\_\_\_\_****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS GRANTING  
ACCEPTANCE OF THE ALVISO ADOBE RENOVATION, (PHASE V- EXHIBITS), PROJECT  
NO. 5055**

**WHEREAS**, the City of Milpitas has heretofore entered into a contract with Gizmo Art Production, Inc., for the Alviso Adobe Renovation, (Phase V – Exhibits), Project No. 5055, in the amount of \$792,574 (“Project”), and the City Engineer or other appropriate representative designated by the City Manager of the City of Milpitas has recommended acceptance of said improvement as completed in accordance with plans, specifications and approved change orders and correction lists, and in accordance with the final inspection of said City Engineer or other appropriate representative designated by the City Manager.

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

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City of Milpitas does hereby accept said improvement as completed on this 21<sup>st</sup> day of February, 2023, and does hereby authorize and direct the City Engineer or other appropriate representative designated by the City Manager of the City of Milpitas to file a Notice of Completion in accordance with the provisions of Section 9204 of the Civil Code of the State of California, and does hereby authorize and direct the City Engineer or other appropriate representative designated by the City Manager to file a Certificate of Completion in accordance with the provisions of Section 4005 of the Government Code of the State of California, if said work was by day’s labor or force account.
3. The City Council authorizes the City Engineer or other appropriate representative designated by the City Manager to issue the Notice of Final Acceptance after the one-year warranty period without further City Council action, provided all required warranty repairs are completed to the satisfaction of the City Engineer or other appropriate representative designated by the City Manager; and nothing herein contained shall in any way be deemed to be a waiver, release or relinquishment by City of any obligations imposed upon the contractor or its surety, or sureties, by law or by the above-referenced improvement contract, save and except those obligations specifically mentioned herein.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2023 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

\_\_\_\_\_  
Suzanne Guzzetta, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael Mutalipassi, City Attorney

APPROVED:

\_\_\_\_\_  
Carmen Montano, Mayor

Recording Requested by and  
When Recorded Mail to:

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

Record without fee under  
Section 6103 - Government Code  
State of California

CITY OF MILPITAS  
NOTICE OF COMPLETION  
(Civil Code Section 9204)

NOTICE IS HEREBY GIVEN:

1. On or about April 20<sup>st</sup>, 2021 the City Council of the City of Milpitas, a municipal corporation of the State of California, whose address is City Hall, 455 East Calaveras Boulevard, Milpitas, California, 95035 (as owner) entered into a contract for work of: **Alviso Adobe Renovation (Phase V – Exhibits), Project No. 5055.**
2. A description of the site of which the City is owner for said work of improvement is: **2087 Alviso Adobe Court** in the City of Milpitas, Santa Clara County, California, more particularly described on the plans.
3. The name and address of the direct contractor is: **Gizmo Art Production, Inc., P.O. Box 411372, San Francisco, CA 94141.**
4. A general statement of the kind of work done or materials furnished to the City is as follows: **The improvements include fabrication and installation of period furnishings, exhibits, interpretive signage, and visual media.**
5. Said work of improvement was accepted by the Milpitas City Council as complete on February 21st, 2023.

\*\*\*\*\*

I, the undersigned, declare that I am the **City Engineer** or other appropriate representative designated by the City Manager of the City of Milpitas and am authorized to execute the foregoing Notice of Completion and this Verification thereof. I have read the foregoing Notice of Completion. I declare under penalty of perjury that the foregoing Notice of Completion is true and correct. Executed on February \_\_\_\_, 2023 at Milpitas, California.

\_\_\_\_\_  
Insert name of the signatory here

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



## CITY OF MILPITAS AGENDA REPORT (AR)

|                      |                                                                                                                                                                                                                                                                                                                                 |
|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Item Title:</b>   | <b>Adopt a Resolution Initiating Proceedings for the Annual Levy and Collection of Assessments, and Ordering the Preparation of the Annual Engineer's Report for Landscaping and Lighting Maintenance Assessment District No. 95-1 (McCarthy Ranch) (Staff Contact: Roberto Alonzo, Principal Civil Engineer, 408-586-3316)</b> |
| <b>Category:</b>     | Consent Calendar-Community Development                                                                                                                                                                                                                                                                                          |
| <b>Meeting Date:</b> | 3/7/2023                                                                                                                                                                                                                                                                                                                        |
|                      | <u>Recommendation:</u> Adopt a Resolution Initiating Proceedings for the Annual Levy and Collection of Assessments and Ordering the Preparation of the Annual Engineer's Report for Landscaping and Lighting Maintenance Assessment District No. 95-1 (McCarthy Ranch)                                                          |

### **BACKGROUND:**

On May 2, 1995, the City Council completed its proceedings in accordance with and pursuant to the Landscaping and Lighting Act of 1972, establishing the Landscaping and Lighting Maintenance Assessment District No. 95-1 (McCarthy Ranch) (LLMD 95-1) to provide for improvement and maintenance of public landscaping, irrigation, pedestrian lighting, gateway columns and entry signs along portions of North McCarthy Boulevard and the Ranch Drive gateway between State Route 237 and Dixon Landing Road as shown on the attached location map (**Attachment 1**).

### **ANALYSIS:**

The Landscaping and Lighting Act of 1972 requires adoption of a resolution (**Attachment 2**) directing preparation of the annual engineer's report evaluating LLMD 95-1 maintenance and improvement costs and generally describing any proposed new improvements or any substantial changes in existing improvements. At subsequent meetings, the City Council will be asked to approve the completed engineer's report and to schedule a public hearing for the proposed assessment in May and June 2023. Upon City Council approval, the assessment for the maintenance and improvement work will be added to the 2023-24 property tax bills of property owners within the boundaries of LLMD 95-1.

### **POLICY ALTERNATIVE(S):**

#### **Alternative 1:**

Not adopt a resolution initiating proceeding for the annual levy and collection of assessments and ordering the preparation of the annual engineer's report for LLMD 95-1.

Pros: None

Cons: The Landscaping and Lighting Act of 1972 requires the legislative body adopt the resolution, not adopting the resolution would jeopardize the City's ability to collect assessments for the maintenance and upkeep of LLMD 95-1.

Reason not recommended: To allow for the continued maintenance for LLMD 95-1, staff recommends ordering the preparation of the annual engineers' report to begin the proceedings for the levy and collection of assessments for fiscal year 2023-24.

### **FISCAL IMPACT:**

The levy and collection of assessments provides a funding resource for the City to improve and maintain public landscaping, irrigation, pedestrian lighting, gateway columns and entry signs within LLMD 95-1.

**California Environmental Quality Act (CEQA):**

Levy and collection of assessment is not considered a project under CEQA as there will be no direct or reasonably foreseeable indirect physical change in the environment.

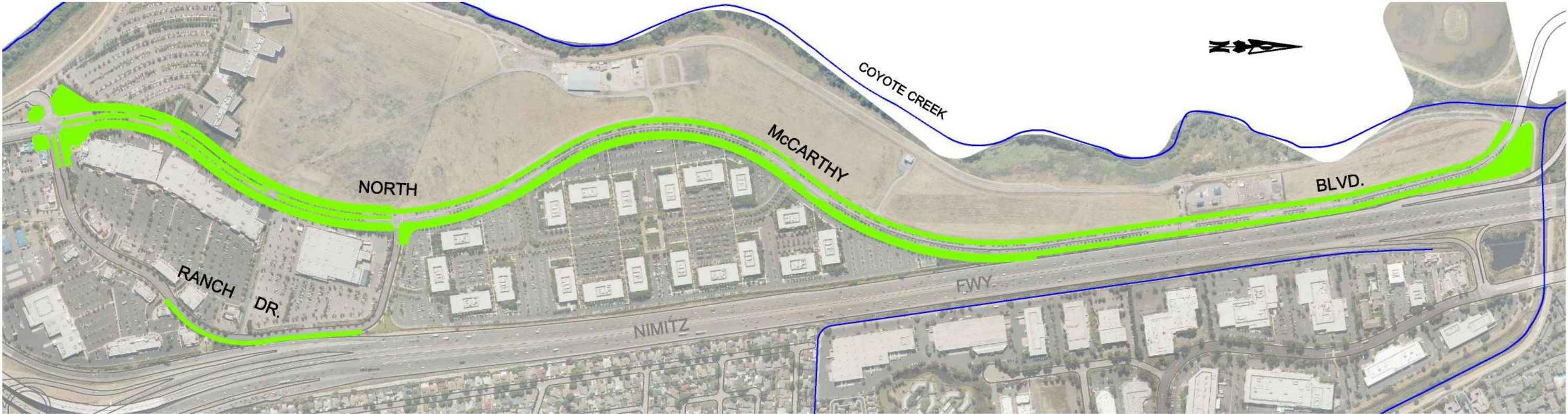
**RECOMMENDATION:**

Adopt a Resolution Initiating Proceedings for the Annual Levy and Collection of Assessments and Ordering the Preparation of the Annual Engineer's Report for Landscaping and Lighting Maintenance Assessment District No. 95-1 (McCarthy Ranch).

**Attachment(s):**

- 1) Location Map
- 2) Resolution

CITY OF MILPITAS  
LANDSCAPING MAINTENANCE DISTRICT (LMD) 95-1  
(N.T.S.)



 2023-2024 FISCAL YEAR LANDSCAPE AREA FUNDED FOR MAINTENANCE

**RESOLUTION NO. \_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS, INITIATING PROCEEDINGS FOR THE LEVY AND COLLECTION OF ASSESSMENTS FOR THE LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT NO. 95-1 (MCCARTHY RANCH) FOR FISCAL YEAR 2023/24, ORDERING THE PREPARATION OF THE ANNUAL ENGINEER'S REPORT, AND MAKING CERTAIN FINDINGS RELATED THERETO**

**WHEREAS**, on May 2, 1995, the City Council (the "City Council") of the City of Milpitas (the "City") completed its proceedings in accordance with and pursuant to the Landscaping and Lighting Act of 1972, Part 2, Division 15 of the California Streets and Highways Code (commencing with Section 22500) (the "Act") to establish Landscaping and Lighting Maintenance Assessment District No. 95-1 (McCarthy Ranch) (the "Maintenance District"), for the purpose of paying for the installation, construction, maintenance and/or servicing of certain improvements authorized under the Act, and incidental expenses in connection therewith (collectively, the "Improvements"); and

**WHEREAS**, Section 22620, *et seq.* of the Act provides for the levy of annual assessments after formation of the Maintenance District; and

**WHEREAS**, the City has retained NBS Government Finance Group as assessment engineer for the purpose of assisting with the annual levy of the Maintenance District, and the preparation and filing of a report in accordance with Section 22565, *et seq.*, of the Act (the "Engineer's Report"); and

**WHEREAS**, pursuant to Section 22622 of the Act, the City Council wishes to initiate proceedings to provide for the levy of assessments for Fiscal Year 2023/24 in order to provide funding for the necessary costs and expenses pertaining to the maintenance of the Improvements within the Maintenance District.

**NOW, THEREFORE**, the City Council 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. Engineer's Report: The City Council hereby orders NBS Government Finance Group to prepare and file with the City Clerk the Engineer's Report concerning the levy and collection of assessments within the Maintenance District for the fiscal year commencing July 1, 2023, and ending June 30, 2024, in accordance with Section 22565, *et seq.*, of the Act.
3. New Improvements or Changes to Existing Improvements: There are no changes to existing Improvements nor are there any items being added to the list of Improvements previously approved at the formation of the Maintenance District.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2023 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)

|                      |                                                                                                                                                                                                                                                                                                                                  |
|----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Item Title:</b>   | <b>Adopt a Resolution Initiating Proceedings for the Annual Levy and Collection of Assessments and Ordering the Preparation of the Annual Engineer's Report for Landscaping and Lighting Maintenance Assessment District No. 98-1 (Sinclair Horizon) (Staff Contact: Roberto Alonzo, Principal Civil Engineer, 408-586-3316)</b> |
| <b>Category:</b>     | Consent Calendar-Community Development                                                                                                                                                                                                                                                                                           |
| <b>Meeting Date:</b> | 3/7/2023                                                                                                                                                                                                                                                                                                                         |
|                      | <u>Recommendation:</u> Adopt a Resolution Initiating Proceedings for the Annual Levy and Collection of Assessments and Ordering the Preparation of the Annual Engineer's Report for Landscaping and Lighting Maintenance Assessment District No. 98-1 (Sinclair Horizon)                                                         |

### **BACKGROUND:**

On June 16, 1998, the City Council completed its proceedings in accordance with and pursuant to the Landscaping and Lighting Act of 1972, establishing the Landscaping and Lighting Maintenance Assessment District No. 98-1 (Sinclair Horizon) (LLMD 98-1) to provide for improvement and maintenance of public landscaping, irrigation, and pedestrian walking path adjacent to Sinclair Frontage Road and Los Coches Creek abutting the Sinclair Horizon residential subdivision as shown in the attached location map (**Attachment 1**).

### **ANALYSIS:**

The Landscaping and Lighting Act of 1972 requires adoption (**Attachment 2**) of a resolution directing preparation of the annual engineer's report evaluating LLMD 98-1 maintenance and improvement costs and generally describing any proposed new improvements or any substantial changes in existing improvements. At subsequent meetings, the City Council will be asked to approve the completed engineer's report and to schedule a public hearing for the proposed assessment in May and June 2023. Upon City Council approval, the assessment for the maintenance and improvement work will be added to the 2023-24 property tax bills of property owners within the boundaries of LLMD 98-1.

### **POLICY ALTERNATIVE(S):**

#### **Alternative 1:**

Not adopt a resolution initiating proceeding for the annual levy and collection of assessments and ordering the preparation of the annual engineer's report for LLMD 98-1.

Pros: None

Cons: The Landscaping and Lighting Act of 1972 requires the legislative body adopt the resolution, not adopting the resolution would jeopardize the City's ability to collect assessments for the maintenance and upkeep of LLMD 98-1.

Reason not recommended: To allow for the continued maintenance for LLMD 98-1, staff recommends ordering the preparation of the annual engineers' report to begin the proceedings for the levy and collection of assessments for fiscal year 2023-24.

### **Fiscal Impact:**

The levy and collection of assessments provides a funding resource for the City to improve and maintain public landscaping, irrigation, and pedestrian walking path within LLMD 98-1.

**California Environmental Quality Act:**

Levy and collection of assessment is not considered a project under CEQA as there will be no direct or reasonably foreseeable indirect physical change in the environment.

**RECOMMENDATION:**

Adopt a Resolution Initiating Proceedings for the Annual Levy and Collection of Assessments and Ordering the Preparation of the Annual Engineer's Report for Landscaping and Lighting Maintenance Assessment District No. 98-1 (Sinclair Horizon).

**Attachment(s):**

- 1) Location Map
- 2) Resolution

CITY OF MILPITAS  
LANDSCAPING MAINTENANCE DISTRICT (LMD) 98-1  
(N.T.S.)



 2023-2024 FISCAL YEAR LANDSCAPE AREA FUNDED FOR MAINTENANCE

ST

**RESOLUTION NO. \_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS, INITIATING PROCEEDINGS FOR THE LEVY AND COLLECTION OF ASSESSMENTS FOR THE LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT NO. 98-1 (SINCLAIR HORIZON) FOR FISCAL YEAR 2023/24, ORDERING THE PREPARATION OF THE ANNUAL ENGINEER'S REPORT, AND MAKING CERTAIN FINDINGS RELATED THERETO**

**WHEREAS**, on June 16, 1998, the City Council (the "City Council") of the City of Milpitas (the "City") completed its proceedings in accordance with and pursuant to the Landscaping and Lighting Act of 1972, Part 2, Division 15 of the California Streets and Highways Code (commencing with Section 22500) (the "Act") to establish Landscaping and Lighting Maintenance Assessment District No. 98-1 (Sinclair Horizon) (the "Maintenance District"), for the purpose of paying for the installation, construction, maintenance and/or servicing of certain improvements authorized under the Act, and incidental expenses in connection therewith (collectively, the "Improvements"); and

**WHEREAS**, Section 22620, *et seq.* of the Act provides for the levy of annual assessments after formation of the Maintenance District; and

**WHEREAS**, the City has retained NBS Government Finance Group as assessment engineer for the purpose of assisting with the annual levy of the Maintenance District, and the preparation and filing of a report in accordance with Section 22565, *et seq.*, of the Act (the "Engineer's Report"); and

**WHEREAS**, pursuant to Section 22622 of the Act, the City Council wishes to initiate proceedings to provide for the levy of assessments for Fiscal Year 2023/24 in order to provide funding for the necessary costs and expenses pertaining to the maintenance of the Improvements within the Maintenance District.

**NOW, THEREFORE**, the City Council 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. Engineer's Report: The City Council hereby orders NBS Government Finance Group to prepare and file with the City Clerk the Engineer's Report concerning the levy and collection of assessments within the Maintenance District for the fiscal year commencing July 1, 2023, and ending June 30, 2024, in accordance with Section 22565, *et seq.*, of the Act.
3. New Improvements or Changes to Existing Improvements: There are no changes to existing Improvements nor are there any items being added to the list of Improvements previously approved at the formation of the Maintenance District.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2023 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)

|                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Item Title:</b>   | <b>Adopt a Resolution Granting Acceptance of Public Improvements and Approve a Reduction of the Faithful Performance Bond for the Lantana Apartments Residential Project and Grant Authorization to the City Engineer to Release the Performance Bond after the One-year warranty period; (Staff Contact: Roberto Alonzo, Principal Civil Engineer, 408-586-3316)</b>                                                                                                                                                                                                                                                                            |
| <b>Category:</b>     | Consent Calendar-Community Development                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Meeting Date:</b> | 3/7/2023                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|                      | <u>Recommendation:</u> Adopt a resolution granting acceptance of the completed public improvements for the Lantana Apartments Residential Project as shown on Public Improvement Plans No. 2-1235; and approve a reduction in the faithful performance bond to \$112,250.00, which is 25% of the security's original value which shall be in effect for the duration of the warranty period; and grant authorization to the City Engineer to release the performance bond after the one-year warranty period without further City Council action provided that all required warranty work is completed to the satisfaction of the City Engineer. |

### **BACKGROUND:**

On June 6, 2018, the City Council approved the Subdivision Improvement Agreement for the Lantana Apartments Residential Project (Project) on a 2.35-acre site located at 1675 South Milpitas Boulevard (Formerly 720 Montague Expressway). New public improvements constructed by the Project include new streets; curb, gutters; sidewalk; utilities; streetlights; and other miscellaneous items of work.

### **ANALYSIS:**

The Developer, S&B Milpitas, LLC, has successfully completed all required public improvements for the Project in accordance with the City approved public improvement plans. The public improvements are now ready for City Council acceptance and commencement of the 1-year warranty period. Staff recommends the City Council adopt a Resolution (attached) granting acceptance of the public improvements, and to approve a reduction of the performance bond to \$112,250.00, which is 25% of the security's original value, and grant authorization to the City Engineer to release the performance bond after the one-year warranty period without further City Council action provided that all required warranty work is completed to the satisfaction of the City Engineer.

A dispute regarding sewer services exists between S&B Milpitas, LLC and the City regarding sanitary sewer fees for the Lantana project. S&B Milpitas, LLC currently disputes \$174,331.01 in outstanding sewer fees. S&B Milpitas, LLC presently owes \$49,459.08 for undisputed sewer and water fees. The sewer and water fees are not related to the public improvements. The City Council has the sole discretion to reduce the security in any amount up to 75% of the original security, including, but not limited to, not reducing the security by any amount.

### **POLICY ALTERNATIVE(S):**

#### **Alternative 1:**

Not approve a resolution granting acceptance of public improvements including the reduction of the performance bond.

Pros: None

Cons: Not granting acceptance of the completed public improvements would limit use of improvements and would not promote the orderly completion and closeout of the Project, and it would be in conflict with the City's obligation under the Subdivision Improvement Agreement.

Reason for Not Recommending: Granting the acceptance of the completed public improvements would allow public use of the improvements and provides for the completion and closeout of the Project as required by the Subdivision Improvement Agreement. Staff recommends the City Council adopt the resolution granting acceptance of public improvements.

**FISCAL IMPACT:**

Public Improvements completed as part of this project will be perpetually owned and maintained by the city following acceptance by the City Council and completion of the 1-year warranty period. The Public Works Department will be responsible for maintenance of the improvements and any required additional funding for ongoing maintenance will be requested through future budget appropriations as the Council adopts the annual operating budget for the Public Works Department.

**California Environmental Quality Act (CEQA):**

Granting acceptance of public improvements and reducing faithful performance bond for public improvements are not considered projects under CEQA as there will be no direct or reasonably foreseeable indirect physical change in the environment. Further, environmental analysis of the construction of public improvements was analyzed at the time the overall project, including the Subdivision Improvement Agreement was considered and approved by the City Council

**RECOMMENDATION:**

Adopt a resolution granting acceptance of the completed public improvements for the Lantana Apartments Residential Project as shown on Public Improvement Plans No. 2-1235; and approve a reduction in the faithful performance bond to \$112,250.00, which is 25% of the security's original value which shall be in effect for the duration of the warranty period; and grant authorization to the City Engineer to release the performance bond after the one-year warranty period without further City Council action provided that all required warranty work is completed to the satisfaction of the City Engineer.

**Attachment(s):**

Resolution

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING ACCEPTANCE AND REDUCING PERFORMANCE BOND OF LANTANA SUBDIVISION, TRACT 10432 AND GRANTING AUTHORIZATION TO THE CITY ENGINEER TO RELEASE THE PERFORMANCE BOND AFTER THE ONE-YEAR WARRANTY PERIOD**

**WHEREAS**, the City Council of the City of Milpitas on June 6, 2018 approved the plans and specifications for the Lantana Subdivision, Tract No. 10432, (the "Project") to be completed by S & B Milpitas, LLC as part of its residential development on 1675 S Milpitas Blvd (Formerly 720 Montague Expressway); and

**WHEREAS**, the City of Milpitas has heretofore entered into a subdivision improvement agreement on June 5th, 2018 with S & B Milpitas, LLC, for the Lantana Subdivision (Tract No. 10432); and

**WHEREAS**, S & B Milpitas, LLC, as Principal, and Philadelphia Indemnity Insurance Company, as Surety, executed and posted a certain Performance Bond Number PB02762300166 conditioned upon the faithful performance of the provisions of said subdivision improvement agreement and upon the faithful performance of all improvement work required thereunder; and

**WHEREAS**, said public improvements for the Lantana Subdivision (Tract No. 10432) have been completed and the subdivision improvement agreement provides that the security shall extend for a period of one year after the date of acceptance of said improvements to cover the warranty period of said improvements under said agreement; and

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

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

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

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. Those certain public improvements constructed as part of the Lantana Subdivision, Tract No. 10432, are hereby accepted as constructed in accordance with the approved plans and specifications upon recommendation of the City Engineer of the City of Milpitas.
3. The penal sum of the faithful performance bond securing said improvements may be reduced to the sum of \$112,250.00, upon request of Principal and Surety, with said penal sum as reduced to apply from the date of completion and acceptance of said improvements and to extend for the balance of the term of one year of said security. Provided, however, that nothing herein contained shall in any way be deemed to be a waiver, release or relinquish by City of any obligations imposed upon the developer or his surety, or sureties, by law or by the above referend public improvement agreement, save and except as expressly set forth herein.
4. The City Council grants authorization to the City Engineer to release the performance bond after the one-year warranty period without further City Council action provided all required warranty work is completed to the satisfaction of the City Engineer.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2023, 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)

|                      |                                                                                                                                                                                                                                                                                                                                                         |
|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Item Title:</b>   | <b>Approval of Fourth Amendment to Memorandum of Agreement with Other Santa Clara Valley Municipalities to Allow for the Continuation of the Santa Clara Valley Urban Runoff Pollution Prevention Program (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602; and Elaine Marshall, Deputy Public Works Director, 408-586-2603)</b> |
| <b>Category:</b>     | Consent Calendar-Community Services and Sustainable Infrastructure                                                                                                                                                                                                                                                                                      |
| <b>Meeting Date:</b> | 3/7/2023                                                                                                                                                                                                                                                                                                                                                |
|                      | <u><b>Recommendation:</b></u> Authorize the City Manager to execute the Fourth Amendment to the Memorandum of Agreement (MOU) for the Santa Clara Valley Urban Runoff Pollution Prevention Program which will allow for a five (5) year extension of the MOU with no change to the existing 2.75% cost share for the City of Milpitas.                  |

### **BACKGROUND:**

The Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP Program) was originally formed in 1990 through a Memorandum of Agreement (MOA) among Santa Clara Valley-based local governments, including the City of Milpitas. The SCVURPPP Program assists member local governments, including the City of Milpitas, to comply with a California Regional Water Board-issued permit which is required for discharges of storm water under the federal Clean Water Act (Stormwater Permit). The SCVURPPP Program was created in 1990 and is comprised of the Santa Clara Valley Water District (Valley Water), the County of Santa Clara, and thirteen cities and towns, including the City of Milpitas.

Most Bay Area municipalities, including the City of Milpitas and the 14 other participants in the SCVURPPP Program, were reissued a Stormwater Permit last spring, which became effective on July 1, 2022. This permit includes many of the requirements that were included in previous municipal regional Stormwater Permits. It also contains several new requirements designed to further address high priority water quality issues in Bay Area receiving waters.

In addition to helping negotiate the Stormwater Permit's requirements with the Regional Water Board, the SCVURPPP Program staff support its members, including the City of Milpitas, in complying with the Stormwater Permit's requirements. This work includes coordination of effort and leveraging of resources among the SCVURPPP Program's participants, community outreach, water quality monitoring, research and development, collaboration with other stormwater programs, and in reporting to the Regional Water Board as required.

In short, the SCVURPPP Program has proven very useful to the City and is highly effective, winning several national awards issued by the U.S. Environmental Protection Agency. Accordingly, since its original formation, the City of Milpitas and all of its other participating local governments, have authorized a continuation of the SCVURPPP Program through adoption of simple non-substantive amendments to its MOA that are virtually identical to the current one on which approval is requested.

### **ANALYSIS:**

The current term of the MOA governing the SCVURPPP Program as established through its last amendment is set to expire one year after the effective date of a new Stormwater Permit issued by the Regional Water Board. Thus, absent timely adoption of another amendment by all participants extending its term, the SCVURPPP Program is set to expire on June 30, 2023.

Accordingly, the Management Committee overseeing the SCVURPPP Program has voted to have its members submit a simple amendment to extend its term for another period running a year beyond the new Stormwater Permit's duration for timely approval by their governing bodies (or duly delegated officials). In support of the requested approvals, they previously directed a review of the SCVURPPP Program's internal controls, practices and performance by the firm of Hilton, Farnkopf and Hobson (HF&H). The review was completed in January 2023 and concluded that the SCVURPPP Program functions and budget are appropriately managed and in line with other Bay Area stormwater programs.

Based on the MOA's terms governing amendments to it, even simple extensions of its term such as this must be unanimously approved by all participating municipalities within three months of being proposed through a recommendation of the SCVURPPP Program's Management Committee. The Management Committee adopted such a recommendation on January 19, 2023 so that the participating municipalities would have until April 19, 2023 to consider this matter and execute their approvals in advance of the SCVURPPP Program otherwise needing to wrap up its affairs by July 1, 2023.

In sum, the requested extension of the MOA's term will allow the SCVURPPP Program to continue to operate and serve the participating municipalities, including the City of Milpitas, throughout the new Stormwater Permit's term and to help address reissuance of the successive Stormwater Permit by the Regional Water Board. Continuing the SCVURPPP Program will also provide for similar economies of scale and aligning of positions relative to reporting and compliance that have been achieved in the past.

As with all prior amendments, no change has been proposed relative to the funding allocation for the SCVURPPP Program, which was negotiated among the participating local governments at the time of its formation in 1990. The cost sharing allocation set forth in the MOA allocates 30.2% to Valley Water, 30.1% to the City of San Jose, and the remainder to the remaining 13 other municipalities that participate in the SCVURPPP Program in a manner roughly proportionate to community size and runoff from respective jurisdictions. The City of Milpitas' share is 2.75%.

**FISCAL IMPACT:**

No fiscal impact. Funding for the City's contribution to the SCVURPPP is included in the Public Works Operating Budget.

**California Environmental Quality Act (CEQA):**

Not a project. Approval of the recommendation is not an activity defined as a "project" under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines 15061(b) (3) and 15378(b)(4) either because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment and/or because the action is financial and/or administrative and does not directly impact the environment.

**RECOMMENDATION:**

Authorize the City Manager to execute the Fourth Amendment to the Memorandum of Agreement (MOU) for the Santa Clara Valley Urban Runoff Pollution Prevention Program which will allow for a five (5) year extension of the MOU with no change to the existing 2.75% cost share for the City of Milpitas.

**Attachment(s):**

1. Fourth Amendment to the Memorandum of Agreement for the Santa Clara Valley Urban Runoff Pollution Prevention Program
2. Original Memorandum of Agreement for the Santa Clara Valley Urban Runoff Pollution Prevention Program

**FOURTH AMENDMENT TO AGREEMENT  
PROVIDING FOR IMPLEMENTATION OF  
THE SANTA CLARA VALLEY URBAN RUNOFF  
POLLUTION PREVENTION PROGRAM**

THIS FOURTH AMENDMENT TO AGREEMENT PROVIDING FOR IMPLEMENTATION OF THE SANTA CLARA VALLEY URBAN RUNOFF POLLUTION PREVENTION PROGRAM (the “Amendment”) is entered into by and between the SANTA CLARA VALLEY WATER DISTRICT, a local public agency of the State of California (“District”); CITY OF CAMPBELL, a municipal corporation of the State of California; CITY OF CUPERTINO, a municipal corporation of the State of California; CITY OF LOS ALTOS, a municipal corporation of the State of California; TOWN OF LOS ALTOS HILLS, a municipal corporation of the State of California; TOWN OF LOS GATOS, a municipal corporation of the State of California; CITY OF MILPITAS, a municipal corporation of the State of California; CITY OF MONTE SERENO, a municipal corporation of the State of California; CITY OF MOUNTAIN VIEW, a municipal corporation of the State of California; CITY OF PALO ALTO, a municipal corporation of the State of California; CITY OF SAN JOSE, a municipal corporation of the State of California; CITY OF SANTA CLARA, a municipal corporation of the State of California; CITY OF SARATOGA, a municipal corporation of the State of California; CITY OF SUNNYVALE, a municipal corporation of the State of California; and COUNTY OF SANTA CLARA, a political subdivision of the State of California.

All of the above-mentioned entities are hereinafter collectively referred to as “Parties” or individually as “Party.”

**RECITALS**

A. The Parties previously entered into that certain Agreement Providing For Implementation of the Santa Clara Valley Urban Runoff Pollution Prevention Program (the “Agreement” or “MOA”) pursuant to which the Parties established certain terms and conditions relating to the implementation and oversight of the Santa Clara Valley Urban Runoff Pollution Prevention Program (the “Program”), including a cost sharing allocation, which was appended thereto as Exhibit A. Unless otherwise set forth herein, all terms shall have the meaning set forth in the Agreement as amended. A copy of the Agreement inclusive of Exhibit A is attached hereto as Appendix 1. A copy of the Agreement inclusive of all of its previous amendments is available via the internet at [https://scvurppp.org/wp-content/uploads/2019/10/MOA\\_2016\\_complete\\_package\\_DEC\\_2016.pdf](https://scvurppp.org/wp-content/uploads/2019/10/MOA_2016_complete_package_DEC_2016.pdf));

B. The Agreement originally provided for a five-year term, which, based on its execution, was set to conclude on or about March 10, 2005. However, on or about February 20, 2005, the Parties unanimously entered into a First Amendment to the Agreement, which extended the term of the Agreement by one additional year;

C. The Parties thereafter unanimously entered into a Second Amendment to the Agreement, which extended the term of the amended Agreement by “one fiscal year beyond the termination date of the (then) next NPDES Permit issued to the Parties, including any administrative extension of the (then) next NPDES Permit’s term which occurred pursuant to the NPDES regulations.” The next NPDES permit applicable to the Parties (and others) was subsequently adopted by the California Regional Water Quality Control Board, San Francisco Bay Region (“RWQCB SFBR”) on October 14, 2009 and was known as the Municipal Regional Permit (“MRP”) because it covered numerous public agencies in the San Francisco Bay Region in addition to the Parties. The MRP was then administratively extended until a new NPDES Permit applicable to the Parties (and the other public entities in the San Francisco Bay Region) was adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on November 19, 2015 (“MRP 2.0”). MRP 2.0 became effective on January 1, 2016 and was originally scheduled to terminate on December 31, 2020;

D. The Parties thereafter unanimously entered into a Third Amendment to the Agreement, which once again extended the term of the amended Agreement by “one fiscal year beyond the termination date of the next NPDES Permit issued to the Parties, including any administrative extension of the next NPDES Permit’s term which occurred pursuant to the NPDES regulations.” MRP 2.0 was then administratively extended, largely due to the COVID-19 pandemic, until a new NPDES Permit applicable to the Parties (and the other public entities in the San Francisco Bay Region) was adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on May 11, 2022 (“MRP 3.0”). MRP 3.0 became effective on July 1, 2022 and is currently scheduled to terminate on June 30, 2027 unless administratively extended;

E. The Parties expect to utilize the Program to continue to represent their interests relative to MRP 3.0 (including with respect to an administrative appeal of its adoption that the State Water Resources Control Board is considering to pursue on its own motion), to help them effectuate certain aspects of compliance with MRP 3.0, and, beyond that, in negotiating the terms of a further renewed NPDES Permit when MRP 3.0 nears the end of its anticipated five-year term and any administrative extension provided thereto;

F. The Parties also expect to continue to utilize the Program’s preferred approach of achieving consensus to resolve issues and reach decisions, and to rely on the Majority Vote mechanism set forth in Section 2.08 of the Agreement at the Management Committee level only when consensus-based resolutions appear or become elusive;

G. The Parties now desire to update the Agreement as previously amended and further extend the term of the MOA as set forth below;

H. Section 7.02 of the MOA provides that it may be amended by the unanimous written agreement of the Parties and that all Parties agree to bring any proposed amendments to their Council or Board, as applicable, within three (3) months following acceptance by the Management Committee; and

I. The Program's Management Committee accepted this Amendment for referral to the Parties' Councils and/or Boards at its meeting on January 19, 2023.

**NOW, THEREFORE, THE PARTIES HERETO FURTHER AGREE AS FOLLOWS:**

1. Recognition of Current Permit. Recital F of the Agreement, as previously amended, is hereby further amended by the addition of the following subsections:

6. Order No. R2-2009-0074 (the Municipal Regional Permit, NPDES Permit CAS612008); adopted October 14, 2009 and amended by the RWQCB SFBR on November 28, 2011;

7. Order No. R2-2015-0049 (MRP 2.0, NPDES Permit CAS612008); adopted by the RWQCB SFBR on November 19, 2015;

8. Order No. R2-2022-0018 (MRP 3.0, NPDES Permit CAS612008); adopted by the RWQCB SFBR on May 11, 2022.

2. Extension of Term of Agreement. Sections 6.02 and 6.02.01 of the Agreement, as previously amended, are hereby replaced as follows:

This Agreement shall have a term extending one fiscal year beyond the date of termination of MRP 3.0; such termination date shall, however, be deemed to include any administrative extension of MRP 3.0 which occurs or arises pursuant to the NPDES regulations or any modification of the MRP 3.0 termination date that arises from an NPDES permitting action undertaken by the RWQCB SFBR or California State Water Resources Control Board.

3. Superseding Effect. This Fourth Amendment of the Agreement shall supplement all prior amendments of the Agreement and supersede any conflicting provisions of the prior amendments of the Agreement.

[remainder of page intentionally blank]

**IN WITNESS WHEREOF**, the Parties have executed this Fourth Amendment effective as of the last date indicated below or April 19, 2023, whichever arises earlier.

***Santa Clara Valley Water District:*** By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

***County of Santa Clara:*** By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

***City of Milpitas:*** By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **Appendix 1**

Agreement Providing For Implementation  
of the Santa Clara Valley Urban Runoff  
Pollution Prevention Program  
as fully executed as of March 10, 2000

AGREEMENT  
PROVIDING FOR IMPLEMENTATION OF  
THE SANTA CLARA VALLEY URBAN RUNOFF  
POLLUTION PREVENTION PROGRAM

THIS AGREEMENT, is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 1999 by and between the SANTA CLARA VALLEY WATER DISTRICT (DISTRICT), a local public agency of the State of California; COUNTY OF SANTA CLARA, a political subdivision of the State of California; CITY OF CAMPBELL, a municipal corporation of the State of California; CITY OF CUPERTINO, a municipal corporation of the State of California; CITY OF LOS ALTOS, a municipal corporation of the State of California; TOWN OF LOS ALTOS HILLS, a municipal corporation of the State of California; TOWN OF LOS GATOS, a municipal corporation of the State of California; CITY OF MILPITAS, a municipal corporation of the State of California; CITY OF MONTE SERENO, a municipal corporation of the State of California; CITY OF MOUNTAIN VIEW, a municipal corporation of the State of California; CITY OF PALO ALTO, a municipal corporation of the State of California; CITY OF SAN JOSE, a municipal corporation of the State of California; CITY OF SANTA CLARA, a municipal corporation of the State of California; CITY OF SARATOGA, a municipal corporation of the State of California; and CITY OF SUNNYVALE, a municipal corporation of the State of California.

All of the above-mentioned entities are hereinafter collectively referred to as "PARTIES" or individually as "PARTY."

**RECITALS:**

- A. The 1986 Water Quality Control Plan for the San Francisco Bay (Basin Plan), adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, in implementation of the Federal Clean Water Act, required that PARTIES develop a program to control pollution from urban runoff, or nonpoint sources of water pollution in the Santa Clara Valley.
- B. In furtherance of their responsibilities pursuant to the Basin Plan, the PARTIES have previously entered into a series of agreements to jointly fund the cost of preparing an action plan to evaluate nonpoint source pollutants, monitor identified pollutants, and develop control measures to mitigate or reduce nonpoint source pollution. Collectively, the measures undertaken pursuant to the previous agreements and anticipated to continue pursuant to this Agreement, were known as the Santa Clara Valley Nonpoint Source Pollution Control Program and upon execution of this agreement henceforth shall be known as the Santa Clara Valley Urban Runoff Pollution Prevention Program (hereinafter called "Program").
- C. In 1987 Congress added Section 402 (p) to the Federal Clean Water Act (CWA) (33 U.S.C. Section 1342 (p)), which requires certain municipalities and industrial facilities to obtain a National Pollutant Discharge Elimination System (NPDES) permit for the

discharge of stormwater to navigable waters. NPDES permits are also required under Section 402 (p) for any stormwater discharge which the Federal Environmental Protection Agency (EPA) or a State has determined contributes to a violation of a water quality standard or is a significant contributor of pollutants to surface waters.

- D. Section 402 (p) further required EPA to promulgate regulations for initial NPDES permit applications for stormwater discharges. The EPA promulgated such regulations in November 1990.
- E. The EPA has delegated authority to the California State Water Resources Control Board (SWRCB) to administer the NPDES permit process within California and, in turn, the SWRCB has delegated authority to the California Regional Water Quality Control Board - San Francisco Bay Region (RWQCB-SFBR) to administer the NPDES permit process within its region.
- F. Pursuant to Section 402 (p) of the CWA and EPA regulations, the RWQCB-SFBR adopted the following orders further defining the program that the PARTIES are to develop and implement:
  - 1. Order No. 90-094 (NPDES Permit No. CA0029718), adopted June 20, 1990; and
  - 2. Order No 95-180 (NPDES Permit No. CAS029718); adopted August 23, 1995.
- G. In and for the mutual interest of the PARTIES, the PARTIES wish to continue the Program by entering into this Agreement for the purpose of ensuring continued participation, in terms of cost and administrative responsibilities.
- H. DISTRICT is a local public agency of the State of California duly organized and existing within the County of Santa Clara. The County of Santa Clara is a political subdivision of the State of California. All other PARTIES are municipal corporations, duly organized and existing under the laws of the State of California.
- I. The RWQCB-SFBR is conducting a Watershed Management Initiative (WMI) in Santa Clara County. The Program is required, as part of its NPDES permit, to develop and implement a Watershed Management Measures Strategy. The Urban Runoff Management Plan of the Program contains the Program's Watershed Management Measures Strategy. This strategy, consistent with the NPDES permit, coordinates Program activities with the WMI to develop and implement cost-effective approaches to address specific urban runoff pollution problems. The Program, through a continuous improvement process, annually reviews the strategy.

**NOW, THEREFORE, THE PARTIES HERETO FURTHER AGREE, AS FOLLOWS:****Section 1. Santa Clara Valley Urban Runoff Pollution Prevention Program**

1.01 The Santa Clara Valley Nonpoint Source Pollution Control Program ("Program") is hereby continued as the Santa Clara Valley Urban Runoff Pollution Prevention Program to fulfill the requirements of NPDES Permit No. CAS029718 as it exists, may be modified, or may be reissued in the future (hereinafter referred to as "NPDES Permit").

1.02 The Program is a collective effort and implementation of area-wide activities, designed to benefit all PARTIES.

**Section 2. Management Committee**

2.01 A Management Committee is hereby reconstituted to provide for overall Program coordination, review, and budget oversight, with respect to the NPDES Permit.

2.02 The Management Committee may as necessary adopt and revise Bylaws for its governance.

2.03 The Management Committee is the official management and oversight body of the Program. The Management Committee shall direct and guide the Program and review and approve the Program Budget. The Management Committee shall consider permit compliance, including benefit to a majority of the PARTIES, as a primary objective in approving Program tasks and corresponding budgets.

2.04 The Management Committee may periodically re-evaluate and make recommendations to the PARTIES concerning reallocation of the proportion of the annual Program contribution that each PARTY shall pay.

2.05 The voting membership of the Management Committee shall consist of one designated voting representative from each PARTY. An alternative voting representative may be appointed by each PARTY. The RWQCB-SFBR may appoint a non - voting representative and alternate to the Management Committee.

2.06 A quorum of the Management Committee shall be achieved when at least nine (9) voting representatives, including at least one (1) representative from each of City of San Jose and Santa Clara Valley Water District, are present at any Management Committee meeting.

2.07 Meetings of the Management Committee, including any closed sessions with Program Legal Counsel, shall be conducted in accordance with the "Brown Act"

(Government Code Section 54950 et seq.) The individual parties have differing opinions on whether the Brown Act legally should be interpreted as applying to members of the Management Committee. In executing this Agreement, the parties do not waive their right to take the position that the Brown Act legally does not apply, but voluntarily agree to follow Brown Act procedures for Management Committee meetings. Except for official meetings of the Management Committee, nothing herein shall be interpreted to require meetings between staff members of the individual Parties (including designated representatives of the Parties) to be subject to the Brown Act, where the Brown Act would not otherwise apply. Each party is individually responsible for ensuring that it complies with the Brown Act.

2.08 The affirmative vote of at least eight (8) voting members of the Management Committee, which collectively contribute at least fifty percent (50%) of the area-wide Program costs (a "Majority Vote"), is necessary to approve any measure brought before the Management Committee.

2.09 The Management Committee shall be responsible for selecting any consultant(s) or contractor(s) who are to be paid from Program funds ("Outside Contractors"), using a process approved by the Contracting Agent, and for reviewing and approving any contracts with Outside Contractors, including the scope(s) of work, schedules of performance, use of subcontractors, and compensation for such Outside Contractors.

2.10 The Management Committee shall select a PARTY or Outside Contractor to act as Program Manager for the Program. The Program Manager shall be responsible for Program management and administration, Permit management, and technical program management all in accordance with the NPDES Permit, this Agreement, Program Bylaws, and as directed by the Management Committee in the best interest of the PARTIES as a whole and individually. The Program Manager shall be paid, from Program funds in accordance with the adopted Program budget, for providing the services described hereunder. The Program Manager shall not be responsible for providing program management services related to individual PARTIES permit programs, but may provide such services under separate contract with any PARTY or PARTIES.

2.11 The Management Committee may select an attorney (Program Attorney) or firm that is experienced with the Clean Water Act and Municipal Stormwater NPDES Permits to provide legal advice to the Management Committee on all matters involving administration of the Program's NPDES permit and such other matters upon which the Management Committee may seek legal advice or request legal representation. Program Legal Counsel shall not be responsible for providing legal advice related to permit compliance to individual PARTIES, but may provide such services under separate contract with any PARTY or PARTIES. The Program Manager may

assist in coordination of activities with the Program Attorney but shall not give direction without prior authorization from the Management Committee.

2.12 The Management Committee shall establish timelines and budgets for completion of Program tasks. The Management Committee shall rate the performance of the Program, and in turn rate the performance of the Program Manager, based upon the Program's ability to meet such approved timelines and budgets.

2.13 The Management Committee, through its Bylaws, may establish procedures for tracking, accounting for, and auditing the Program Fund.

### Section 3. Program Budget

3.01 A collective budget for the Program (Program Budget) shall be based upon a projection of two consecutive fiscal year cycles, however, the Budget shall be adopted for only one fiscal year cycle. The Budget shall include a Contingency/Reserve Fund which shall not exceed ten percent (10%) of the operating costs of the adopted Budget.

3.02 The PARTIES shall each pay a yearly assessment into a fund established for Program operations for their assigned portion of the Program Budget. The proportionate share of the Program Budget that each PARTY shall pay is shown in the schedule marked Exhibit A hereto and incorporated by reference herein.

3.03 Except as provided in Section 6.03, the ending fund balance at the close of each fiscal year shall be disbursed annually to the PARTIES, or credited to the PARTIES' share of the next fiscal year's costs, in accordance with the PARTIES defined participation rates, as requested by each PARTY.

### Section 4. Contracting/ Fiscal Agent

4.01 DISTRICT shall serve as the initial Contracting/Fiscal Agent for the Program.

4.02 DISTRICT may withdraw as the Contracting Fiscal Agent upon the provision of ninety days (90) days written notice to the Management Committee.

4.03 In the event that the Contracting/Fiscal Agent withdraws from the Program or from providing Contracting/Fiscal Agent services to the Program, another PARTY may serve as a successor Contracting/Fiscal Agent. Any PARTY willing to serve as successor Contracting/Fiscal Agent may be nominated by another PARTY. Selection of a Contracting/Fiscal Agent must be by majority vote of the Management Committee.

4.04 The Contracting/Fiscal Agent shall act in a reasonable amount of time to execute contracts with Outside Contractors, including the Program Manager, which have been requested and approved by the Management Committee.

4.05 The Contracting/Fiscal Agent shall be the treasurer of Program funds. The Contracting/Fiscal Agent, in accordance with generally accepted accounting procedures, shall keep the Program funds segregated from any other funds administered by the Contracting/Fiscal Agent; shall credit the Program with appropriate interest income earned on Program funds in each fiscal year; and shall not expend any funds except in accordance with the annual budget approved by the Management Committee or as otherwise directed by the Management Committee.

4.06 The Contracting/Fiscal Agent shall provide a copy of any contract executed on behalf of the Program to any PARTY or person designated by any PARTY or the Management Committee upon request. The governing body of the Contracting/Fiscal Agent, at its discretion, may delegate authority to execute agreements and contracts approved by the Management Committee, to a designated employee. Notice of any such delegation of authority shall be provided to the Management Committee.

4.07 The Contracting/Fiscal Agent may request, as part of the annual Program Budget, reimbursement for reasonable and customary costs incurred in providing the services described hereunder. Reimbursement to the Contracting/Fiscal Agent shall be subject to Management Committee review and approval as part of the Program Budget.

#### Section 5. Ancillary Rights and Duties of the Parties

5.01 In addition to the participation in the Management Committee, the PARTIES accept and agree to perform the following duties:

1. Each will comply with the NPDES Permit conditions set forth in its Community-Specific plan;
2. Each will participate in Management Committee meetings and other required meetings of the PARTIES;
3. Each will implement its Community-Specific program;
4. Each will provide certain agreed upon reports to the Program for purposes of reporting, on a joint basis, compliance with applicable provisions of the NPDES Permit and the status of Program

implementation; and

5. Each will individually address inter-agency issues, agreements or other cooperative efforts.

5.02 This Agreement does not restrict the PARTIES from the ability to individually (or collectively) request NPDES Permit modifications and/or initiate NPDES Permit appeals for permit provisions to the extent that a provision affects an individual party (or group of PARTIES); however, any such PARTY (or PARTIES) shall make reasonable efforts to provide advance notice of their action to the other PARTIES and allow them to comment upon or join in their action before proceeding.

## Section 6. Term of Agreement

6.01 The term of this Agreement shall commence on the date the last duly authorized representative of the PARTIES executes it.

6.02 This Agreement shall have a term of five (5) years.

6.03 Any PARTY may terminate its participation in this Agreement by giving the Chair of the Management Committee at least thirty (30) day written notice. The terminating PARTY will bear the full responsibility for its compliance with the NPDES Permit commencing on the date it terminates its participation, including its compliance with both Community-Specific and Program-wide responsibilities. Unless the termination is scheduled to be effective at the close of the fiscal year in which the notice is given, termination shall constitute forfeiture of all of the terminating PARTY's share of the Program Budget, for the fiscal year in which the termination occurred (both paid and obligated but unpaid amounts). In addition, unless notice of termination is provided at least ninety (90) days prior to the date established by the Management Committee for approval of the budget for the succeeding fiscal year, termination shall constitute forfeiture of all of the terminating PARTY's share of any unexpended, unencumbered funds remaining from all previous fiscal years. The cost allocations for the remaining PARTIES' may be recalculated for the following fiscal year by the PARTIES without the withdrawing PARTY's participation.

## Section 7. General Legal Provisions

7.01. This Agreement supersedes any prior agreement among all the PARTIES regarding the Program, but does not supersede any other agreements between any of the PARTIES.

7.02 This Agreement may be amended by unanimous written agreement of the PARTIES. All PARTIES agree to bring any proposed amendment to this Agreement to their Council or Board, as applicable, within three (3) months following acceptance by the Management Committee.

7.03 This Agreement may be executed and delivered in any number of copies ("counterpart") by the PARTIES, including by means of facsimile. When each PARTY has signed and delivered at least one counterpart to the Program, each counterpart shall be deemed an original and, taken together, shall constitute one and the same Agreement, which shall be binding and effective as to the PARTIES hereto.

7.04 No PARTY shall, by entering into this Agreement, participating in the Management Committee, or agreeing to serve as Fiscal Agent, Contracting Agent, Program Manager, and/or Legal Counsel, assume or be deemed to assume responsibility for any other PARTY in complying with the requirements of the NPDES Permit. This Agreement is intended solely for the convenience and benefit of the PARTIES hereto and shall not be deemed to be for the benefit of any third party and may not be enforced by any third party, including, but not limited to, the EPA, the SWRCB, and the RWQCB-SFBR, or any person acting on their behalf or in their stead.

7.05 In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the PARTIES pursuant to Government Code Section 895.6, the PARTIES agree that all losses or liabilities incurred by a PARTY shall not be shared pro rata but instead the PARTIES agree that pursuant to the Government Code Section 895.4, each of the PARTIES hereto shall fully defend, indemnify and hold harmless each of the other PARTIES from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts of omissions or willful misconduct of the indemnifying PARTY, its officers agents or employees, under or in connection with or arising from any work, authority or jurisdictions delegated to such PARTY under this Agreement, including but not limited to any non-compliance by a PARTY with its obligations under the Program NPDES Permit. No PARTY, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability incurred by reason of the negligent acts or omissions or willful misconduct of the other parties hereto, their officers, board members, employees or agents under or in connection with or arising from any work, authority or jurisdictions delegated to such PARTY under this Agreement, including but not limited to any non-compliance by a PARTY with its obligations under the Program NPDES Permit.

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

///

## EXHIBIT A

SANTA CLARA VALLEY URBAN RUNOFF POLLUTION PREVENTION PROGRAM  
SCHEDULE OF COST-SHARING PROPORTIONS

| <u>Jurisdiction</u> | <u>Proportional Share</u> |
|---------------------|---------------------------|
| Campbell            | 1.88%                     |
| Cupertino           | 2.46%                     |
| Los Altos           | 1.59%                     |
| Los Altos Hills     | 0.43%                     |
| Los Gatos           | 1.74%                     |
| Milpitas            | 2.75%                     |
| Monte Sereno        | 0.14%                     |
| Mountain View       | 3.91%                     |
| Palo Alto           | 4.06%                     |
| Santa Clara         | 6.23%                     |
| Saratoga            | 1.59%                     |
| Sunnyvale           | 7.25%                     |
| Santa Clara County  | 5.94%                     |
| Subtotal            | 39.97%                    |
| San Jose            | 30.01%                    |
| District            | 30.02%                    |
| TOTAL               | 100.00%                   |



## CITY OF MILPITAS AGENDA REPORT (AR)

|                      |                                                                                                                                                                                                                                                                                                                                           |
|----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Item Title:</b>   | <b>Adopt a Resolution to Appoint Second Council Liaison to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Community Task Force (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001; and Mayor Montano, 408-586-3024)</b>                                                                   |
| <b>Category:</b>     | Consent Calendar-Leadership and Support Services                                                                                                                                                                                                                                                                                          |
| <b>Meeting Date:</b> | 3/7/2023                                                                                                                                                                                                                                                                                                                                  |
|                      | <u>Recommendation:</u> (1) Adopt a resolution approving the addition of a second City Council Liaison to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Task Force; and (2) Approve the Mayor's Appointment of Vice Mayor Evelyn Chua as the second City Council Liaison to the CEDAW Task Force. |

### **Background:**

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), an international human rights treaty, provides a universal definition of discrimination against women and brings attention to a range of issues concerning women's human rights. Countries that ratify CEDAW are mandated to condemn all forms of discrimination against women and girls and to ensure equality for women and girls in the civil, political, economic, social and cultural arenas. The United Nations General Assembly adopted CEDAW in 1979 and President Carter signed the treaty on behalf of the United States in 1980, but the United States Senate has not yet ratified CEDAW. Since 1995, state and local jurisdictions have stepped up and passed resolutions in support of CEDAW. Some have implemented ordinances establishing CEDAW principles as law. In 2014, municipalities across the nation began signing onto the Cities for CEDAW Initiative, pledging to step up where the federal government has failed and implement the principles of CEDAW at the local level.

The City of Milpitas passed Resolution No. 8973 on May 19, 2020, in support of CEDAW, and on June 16, 2020, adopted Ordinance No. 306 which directed the establishment of a community Task Force to implement the principles of CEDAW in the Milpitas community at large. In preparation for the formation of the Task Force, City Staff applied for and was awarded \$25,000 from the California Commission on the Status of Women and Girls "Women's Recovery Response", for staff support to form the new Task Force for 6 months.

Per Ordinance No. 306, the Task Force has six members, including one (1) Council Liaison (to be appointed by the Mayor with concurrence of the Council). On September 6, 2002, City Council approved the appointment of CEDAW Task Force Members as:

| <b>Applicant Name</b> | <b>Applicant Title</b>    | <b>Applicant Organization</b>                | <b>Proposed Task Force Representative Seat</b> |
|-----------------------|---------------------------|----------------------------------------------|------------------------------------------------|
| Vicky Ly              | ASB President             | Girl UP Club – MHS                           | Youth Liaison – Girl UP                        |
| Zakia Afrin           | Board Member              | Maitri – Domestic Violence Victims' Advocacy | Violence Against Women and Girls               |
| Giuliana Brahim       | Adult Education Principal | Milpitas Unified School District             | Economic Development                           |
| Dr. Swatisikta        | Physician                 | Healthcare Practice                          | Healthcare                                     |
| Ashwini Kantak        | Assistant City Manager    | City of Milpitas                             | City Representative                            |
| Carmen Montano        | Mayor                     | City of Milpitas                             | Council Representative                         |

On January 10, 2023, the City Council approved appointments of City Councilmembers as Liaisons to City Commissions, City Subcommittees, and Outside Agency Boards and Committees and Vice Mayor Evelyn Chua was appointed as the alternate City Council liaison to the CEDAW Task Force. At the February 27, 2023

CEDAW Task Force Meeting, the Task Force voted unanimously to recommend the City Council approve the appointment of a second City Council liaison to the Task Force.

**Analysis:**

According to the section of Ordinance No. 306, ***Implementation of the Principles of CEDAW in Milpitas (Community Task Force)***, item (c) "Further details about the Task Force can be established through the adoption of a resolution of the City Council." Through the adoption of this proposed resolution the updated CEDAW Task Force members would be:

- One member with subject matter expertise in Economic Development
- One member with subject matter expertise in Violence Against Women and Girls
- One member with subject matter expertise in Healthcare
- One youth liaison member from the club "Girl Up" from the Milpitas High School
- Two Council Liaisons (to be appointed by the Mayor with concurrence of the Council)
- One Staff Liaison (to be appointed by the City Manager)

Considering that Vice Mayor Evelyn Chua is currently the alternate Council liaison to the Task Force, the Vice Mayor is recommended for consideration for appointment to the CEDAW Task Force as the second Council Liaison.

**Fiscal Impact:**

There is no fiscal impact with this item or the appointment of members to the CEDAW Task Force.

**California Environmental Quality Act:**

By the definition provided in the California Environmental Quality Act (CEQA) Guidelines Section 15378, this action does not qualify as a "project" for the purpose of CEQA.

**Recommendation(s):**

- (1) Adopt a resolution approving the addition of a second City Council Liaison to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Task Force; and
- (2) Approve the Mayor's Appointment of Vice Mayor Evelyn Chua as the second City Council Liaison to the CEDAW Task Force.

**Attachment:**

1. Resolution

**RESOLUTION NO. \_\_\_\_\_****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING THE ADDITION OF A SECOND COUNCIL LIAISON MEMBER TO THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW) COMMUNITY TASK FORCE**

**WHEREAS**, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), an international human rights treaty, provides a universal definition of discrimination against women and brings attention to a whole range of issues concerning women's human rights. Countries that ratify CEDAW are mandated to condemn all forms of discrimination against women and girls and to ensure equality for women and girls in the civil, political, economic, social and cultural arenas. The United Nations General Assembly adopted CEDAW in 1979 and President Carter signed the treaty on behalf of the United States in 1980, but the United States Senate has not yet ratified CEDAW; and

**WHEREAS**, since 1995, state and local jurisdictions have stepped up and passed resolutions in support of CEDAW. Some have implemented ordinances establishing CEDAW principles as law. In 2014, municipalities across the nation began signing onto the Cities for CEDAW Initiative, pledging to step up where the federal government has failed and implement the principles of CEDAW at the local level; and

**WHEREAS**, indeed, there is a continued need for the City of Milpitas to protect the human rights of women and girls by addressing discrimination, including violence, against them and to implement, locally, the principles of CEDAW. Adherence to the principles of CEDAW on the local level will especially promote equal access to and equity in health care, employment, economic development and educational opportunities for women and girls and will also address the continuing and critical problems of violence against women and girls; and

**WHEREAS**, the City of Milpitas adopted Ordinance No. 306 on August 4, 2020, calling for the City to establish a community task force to implement the principles of CEDAW. That ordinance also established that the method for further details about the task force would be made through the adoption of a resolution of the City Council.

**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 CEDAW Task Force membership shall be revised to include two (2) Council Liaison members to be appointed by the Mayor with concurrence of Council.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

\_\_\_\_\_  
Suzanne Guzzetta, City Clerk

APPROVED:

\_\_\_\_\_  
Carmen Montano, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael Mutalipassi, City Attorney



## CITY OF MILPITAS AGENDA REPORT (AR)

|                      |                                                                                                                                   |
|----------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| <b>Item Title:</b>   | <b>Consider the Recommendation from Mayor Montano for Appointments to City Commissions (Contact: Mayor Montano, 408-586-3024)</b> |
| <b>Category:</b>     | Consent Calendar-Leadership and Support Services                                                                                  |
| <b>Meeting Date:</b> | 3/7/2023                                                                                                                          |
|                      | <u>Recommendation:</u> Receive the recommendation from Mayor Montano and approve appointments to City Commissions                 |

### **Background:**

The City of Milpitas has 13 Commissions (including the Measure F Oversight Committee), with members appointed by the Mayor and confirmed by the City Council. The Commissions advise the Milpitas elected officials on a variety of community interest and policy areas.

Any resident interested in serving on a City Commission must complete a Commission Application and submit the form to the City Clerk. Copies of the applications are provided to the Mayor for her consideration. Per Government Code 40605, in a general law city where the office of Mayor is an elective office, the Mayor with the approval of the City Council, shall make all appointments to boards, commissions, and committees unless otherwise specifically provided by statute.

Current Commissioners may seek to be reappointed upon the expiration of their current term, but reappointment to a new term is not automatic. Those Commissioners seeking reappointment must contact the City Clerk and the Mayor to convey their request. Re-appointment must be recommended by the Mayor and confirmed by the City Council.

### **Analysis:**

Mayor Montano is making the following recommendations for appointment:

#### **Community Advisory Commission:**

1. Promote Jose Geronimo to a full voting seat with a term ending January 2026.
2. Appoint Miguel Bilbao to a full voting seat with a term ending January 2026.
3. Appoint Raghu Reddy to a full voting seat with a term ending January 2026.
4. Appoint Andrea D'George as Alternate No. 1 with an unexpired term ending January 2024.
5. Appoint Vishal Gandhi as Alternate No. 2 with a term ending January 2026.

#### **Economic Development and Trade Commission:**

1. Appoint Paul Medewar to the hospitality seat with an unexpired term ending April 2024.

#### **Parks, Recreation, and Cultural Resources Commission:**

1. Appoint Juliette Gomez to a full voting seat with a term ending June 2026.
2. Appoint Peter Felix to a full voting seat with an unexpired term ending June 2025.

#### **Senior Advisory Commission:**

1. Appoint Simon Chu as Alternate No. 2 with a term ending December 2026.

#### **Science, Technology, and Innovation Commission:**

1. Appoint Pulak Mehta to a full voting seat with a term ending January 2026.
2. Appoint Suresh Sinha as Alternate No. 2 with a term ending January 2026.

#### **Veterans Commission:**

1. Appoint Diego Hammett to a full voting seat with an unexpired term ending February 2025.
2. Appoint Rich Tran as Alternate No. 1 with an unexpired term ending February 2025.
3. Appoint Leo Garcia as Alternate No. 2 with an unexpired term ending February 2025.

All recommended Commissioner appointments have been reviewed and confirmed by the City Clerk's office.

**Fiscal Impact:**

There is no fiscal impact associated with this item.

**Recommendation:**

Receive the recommendation from Mayor Montano and approve appointments to City Commissions.

**Attachments:**

1. Applications for Appointments

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

Item # C13.

**Name** Jose Geronimo

**Address Type** Residence

**Address**

**City** Milpitas

**Postal/Zip Code** 95035

**Mobile Number**

**E-Mail Address** @gmail.com

**Occupation** Sales Analyst

**Education: If Youth Advisory Commission applicant, indicate your grade/school:** MBA Marketing, BS Accounting

**College, Professional, Vocational, or other schools attended** GGU, SJSU

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

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

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

Lived in Milpitas since the 90s and have loved the city, loved it enough to call my recording studio I founded East 237 Recording Studio. Why? Because it took me home to Milpitas.

I am applying for Satety commission because my concerns for my family, and every Milpitas families. I want to be able to influence change, not just watch on the sidelines.

Thank you  
Jose

**Date** Sep 22, 2022

**I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.**

**Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant. Once submitted, your application will be submitted to the City Clerk.**

**NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD**

**COMMISSION/COMMITTEE APPLYING FOR:** Community Advisory Commission

**Name** MIGUEL A BILBAO

**Address Type** Business

**Address**

**City** MILPITAS

**Postal/Zip Code** 95035

**Mobile Number**

**E-Mail Address** @YAHOO.COM

**Present Employer** IBIS UNIVERSAL CORPORATON

**Other Phone** (408) 205-4906

**Business Address (Optional)** 16 SOUTH HILLVIEW DRIVE

**City** Milpitas

**Postal / Zip code** 95035

**Occupation** REAL ESTATE BROKER /PRESIDENT

**Education: If Youth Advisory Commission applicant, indicate your grade/school:** NONE

**College, Professional, Vocational, or other schools attended** BS OF BUSINESS MGT & MARKETING

**Major Subject** MANAGEMENT

**Degree** BACHELOR OF SCIENCE

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

**Name of Organization** INTERNATIOAL DEVELOPMENT

**Member** AYALAND-USA/SMDC

**Name of Organization** PHIL-AM

**Member** ADVISORY

**Name of Organization** PHIL-CAL

**Member** CFO

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

**Branch of Military** NO

**Officer** NO

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

I was a member of CAC for five years. I have lived in the City of Milpitas for 31 years. My daughters all went to school in this city.

I have had a business here since 1990 and a new upcoming business. It be will announced in few months.

I love this City and am truly interested in the welfare of the Citizens of Milpitas.

**Date** Feb 08, 1946

**I have sufficient time to devote to this responsibility and will attend the required**

meetings if I am appointed to fill a future vacancy.  
I hereby certify that all statements contained in  
this application are true.



Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant. Once submitted, your application will be submitted to the City Clerk.

NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

**COMMISSION/COMMITTEE APPLYING FOR:** Community Advisory Commission

Item # C13.

**Name** Raghu Reddy

**Address**

**City** Milpitas

**Postal/Zip Code** 95035

**Mobile Number**

**E-Mail Address** @gmail.com

**Present Employer** Oracle

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

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

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

Greetings,

Hope you are doing well!

I am a resident of Milpitas for over a decade and an IT professional and a Community leader for over 2 decades.

A US citizen and reside on my own property. My both Kids are going to Milpitas Schools.

I am the BOD and office bearer for various Nonprofit organizations in the US.

I am the Chairmen- Benefit of the largest Telugu Association in the USA.

Presently I am Also the county Commissioner for the last three years.

I have enough prudent bandwidth to attend all the meetings for this commission which is on the 1st Wednesday of each month and will be a great asset to the commission.

My vast and paramount community experience will help Community and neighborhood development issues and beautification in our Milpitas city.

Appreciate your nimble opportunity to serve the commission.

Thanks and have a wonderful Day!

Raghu

**Date** Sep 28, 2022

**I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.**

**Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant. Once submitted, your application will be submitted to the City Clerk.**

**NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD**

**COMMISSION/COMMITTEE APPLYING FOR:**

Community Advisory Commission

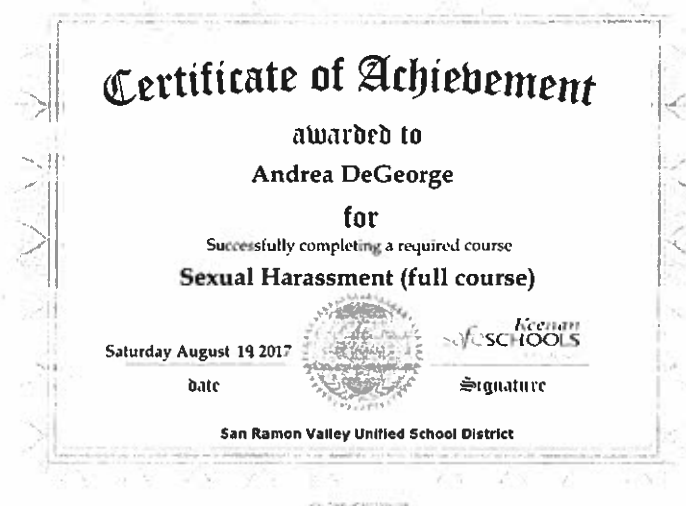
Item # C13.

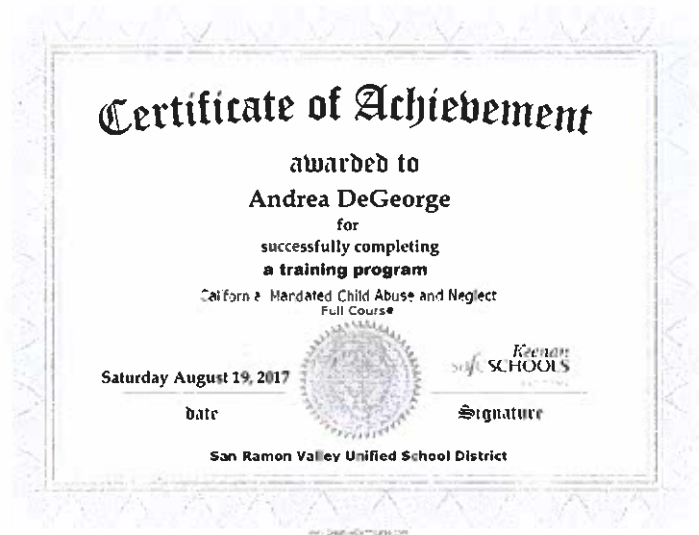
**Name** Andrea DGeorge**Address****City** Milpitas**Postal/Zip Code** 95035**Mobile Number****E-Mail Address** @gmail.com

City Clerk's Office  
APR 22 2022  
RECEIVED

**Present Employer** Self-Employed**Occupation** commercial cleaning**College, Professional, Vocational, or other schools attended** Heald Business College /Active Shooter Training/Adult & Infant CPR certified/Youth Suicide Prevention Certified**Major Subject** Basic/Specialized**Degree** Certified**List community organizations to which you belong or have belonged (additional information may be attached).****Name of Organization** Ayers Elementary PTA**Name of Organization** PTA Auditor Mt Diablo Unified**Name of Organization** Certified in HUD Compliance**If application is for Veterans Commission, indicate branch and service in any U.S. military organization (retired or active duty).****Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):**

I have extensive experience in problem-solving, or what is commonly known as a "defuser". Recognized and consistently acknowledged for my instincts and ability to think "quick on my feet". Strong work ethics and ability to connect with all people with honesty and compassion. I am choosing to serve this community in the best interest of "the people" that reside here. Committed to that purpose, and to put the people's safety before my own. There isn't any business or company, or any amount of money, that would come before protecting the safety and health of the people. I feel it's way overdue, that we do what is best for the community first. Not big tech or telecommunication industries. In short, I can't be bought. What a concept.

**Upload a File** [cpr16PDF.pdf](#)[certificateharassment.jpg](#)



[cert3.jpg](#)

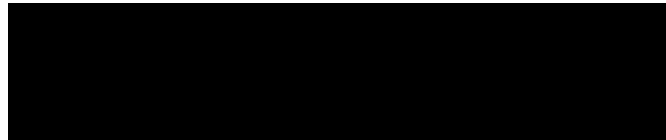


[cert5.jpg](#)

Date

Apr 22, 2022

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.



Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant. Once submitted, your application will be submitted to the City Clerk.

**NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD**

## Christine Pham

---

**From:** [REDACTED]@gmail.com  
**Sent:** Thursday, January 5, 2023 2:25 PM  
**To:** Christine Pham  
**Cc:** Michelle Silva; Robert Musallam  
**Subject:** Re: Community Advisory Commission

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

Hi Christine,

I would like to be reappointed.

Thanks,  
Vishal

On Thursday, January 5, 2023 at 02:09:54 PM PST, Christine Pham <cpham@milpitas.gov> wrote:

Hi Vishal,

My name is Christine with the Milpitas City Clerk office. I'm reaching out to you as your term for the Community Advisory Commission is set to expire this month and we would like to see if you're interested in being reappointed. We look forward to hearing from you.

Thanks,  
  
Christine Pham

**COMMISSION/COMMITTEE APPLYING FOR:** Economic Development and Trade Commission

Item # C13.

**Name** Paul Medawar

**Address Type** Business

**Address**

**City** Milpitas

**Postal/Zip Code** 95035

**Mobile Number**

**E-Mail Address** @sonesta.com

**Present Employer** Sonesta Hotels

**Occupation** General Manager

**Education: If Youth Advisory Commission applicant, indicate your grade/school:** Mount Carmel High School

**College, Professional, Vocational, or other schools attended** San Diego Mesa College

**Major Subject** AA

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

**Name of Organization** Greater Albuquerque Innkeepers Assc.

**Member** BOD

**Name of Organization** Hotel Security Directors ABQ

**Member** BOD

**Name of Organization** Cupertino Chamber of Commerce

**Member** BOD

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

**Date** Feb 17, 2023

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.

Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant. Once submitted, your application will be submitted to the City Clerk.

**NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD**

**COMMISSION/COMMITTEE APPLYING FOR:** Parks, Recreation and Cultural Resources Commission

Item # C13.

**Name** Juliette Gomez

**Address Type** Residence

**Address**

**City** Milpitas

**Postal/Zip Code** 95035

**Mobile Number**

**E-Mail Address** @gmail.com

**Present Employer** Juniper Networks

**Occupation** Executive Coordinator

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

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

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

I have over 30 years of experience coordinating and managing events.

**Date** Feb 17, 2023

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.

Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant. Once submitted, your application will be submitted to the City Clerk.

**NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD**

CITY OF MILPITAS  
COMMISSION APPLICATION

City Clerk Item # C13.

JAN 23 2023

PRCRL  
COMMISSION APPLYING FOR  
RECEIVED

PROVIDE COMPLETE INFORMATION (In black ink)

☒ Mr.

☐ Ms. / Miss / Mrs.

Name: First (middle) Last

Address: Number Street (apt. # if needed) City & Zip Code

Telephone Number(s) e-mail address

Present Employer Business Telephone

Business Address Occupation

Education: If Youth Advisory Commission applicant, indicate your grade & school:

College, Professional, Vocational, or other schools attended Major Subject Date Degree

|                                  |                 |           |            |
|----------------------------------|-----------------|-----------|------------|
| WEST VALLEY J.C.                 | GENERAL ED.     | 1990-1992 | —          |
| CHAMBERLIN SCHOOL OF REAL ESTATE | R.E. PRINCIPLES | 1992-1993 | PRINCIPLES |

List community organizations to which you belong or have belonged (additional information may be attached). If application is for Veterans Commission, indicate branch and service in any U.S. military organization (retired or active duty).

Date Name of Organization or Branch of Military Officer / Member

|        |              |            |
|--------|--------------|------------|
| 2015 - | CAMPBELL, CA | GENERAL    |
| 2022   | C.E.R.T.     | MEMBERSHIP |

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

- EXCEPTIONAL CUSTOMER SERVICE
- ABILITY TO MANAGE AN OFFICE OF 50+ SALES ASSOCIATES

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.

Signature

Date

Appointments to Commissions are made by the Mayor with the concurrence of the City Council. Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant.

PLEASE BE AWARE THAT ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

E-mail, send in US mail or drop off your completed application to:

City Clerk, Milpitas City Hall 3rd floor, 455 E. Calaveras Blvd., Milpitas, CA 95035, email: [mlavelle@ci.milpitas.ca.gov](mailto:mlavelle@ci.milpitas.ca.gov)

**COMMISSION/COMMITTEE APPLYING FOR:** Senior Advisory Commission

**Name** Simon C Chu

**Address Type** Residence

**Address** [REDACTED]

**City** Milpitas

**Postal/Zip Code** 95035

**Mobile Number** [REDACTED]

**E-Mail Address** [REDACTED]@gmail.com

**Present Employer** Retired

**Occupation** Retired chemist

**College, Professional, Vocational, or other schools attended** State University of New York, Stony Brook

**Major Subject** Chemistry

**Degree** Ph.D.

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

**Name of Organization** MUSD

**Member** Substitute teacher

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

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

Resume attached

**Upload a File** [SimonChuCV.pdf](#)

**Date** Jan 25, 2023

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.

Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant. Once submitted, your application will be submitted to the City Clerk.

**NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD**

## Christine Pham

---

**From:** Pulak Mehta <[REDACTED]@gmail.com>  
**Sent:** Monday, January 9, 2023 4:08 AM  
**To:** Christine Pham  
**Subject:** Re: Science, Technology and Innovation Commission

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

Hi Christine,

I'm interested in continuing.

Best,  
Pulak

Sent from my iPhone

On Jan 5, 2023, at 2:12 PM, Christine Pham <cpham@milpitas.gov> wrote:

Hi Pulak,

My name is Christine with the Milpitas City Clerk office. I'm reaching out to you as your term for the Science, Technology and Innovation Commission is set to expire this month and we would like to see if you're interested in being reappointed. We look forward to hearing from you.

Thanks,  
Christine Pham

COMMISSION/COMMITTEE APPLYING FOR: Science, Technology and Innovation Commission

Item # C13.

Name Suresh Kumar Sinha

Address

City Milpitas

Postal/Zip Code 95035

Mobile Number

E-Mail Address @gmail.com

Present Employer Oracle Corporation

Business Address (Optional) 4110 Network Circle, Building 10

City Santa Clara

Postal / Zip code 95054

Occupation Sr. Principal Cybersecurity advisor

College, Professional, Vocational, or other schools attended Northwestern polytechnic university, Fremont and University of Lucknow, India

Major Subject Computer Application, Economics and commerce

Degree MBA and MCom

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

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

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

I have been working in hi-tech for almost 3 decades. I work in technology and understand the benefits and the inherent risks. I am good at using technologies for the benefits of corporations, assessing future needs and managing risks it comes with.

Date Jan 13, 2023

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.

Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant. Once submitted, your application will be submitted to the City Clerk.

NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

City Clerk's Office

JAN 11 2023

**CITY OF MILPITAS COMMISSION/COMMITTEE RECEIVED APPLICATION**

For residence of Milpitas, California ONLY

COMMISSION/COMMITTEE APPLYING FOR:

[ Veterans ]

Name

DIEGO mafnas Hammett

First

Middle

Last

Address Type

Residence

Business

Address

City

milpitas

Postal/Zip Code

95035

Mobile Number

###

###

####

E-Mail Address

@yahoo.com.

Present Employer

Retired / US Army / DOD Police Officer

Other Phone

###

###

####

(wife)

Business Address (Optional)

Item # C13.

City

Postal / Zip code

Occupation

Education: If Youth Advisory Commission applicant, indicate your grade/school:

College, Professional, Vocational, or other schools attended

Major Subject

Degree

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

Name of Organization

Member

FilAM (ST. Elizabeth Catholic Church. <sup>member</sup> Sgt of Arms

Name of Organization

Member

Life member of Veterans of Foreign War.

Name of Organization

Member

Santa Marian Kamalen Choir of St. Elizabeth Catholic Church

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

Branch of Military

Officer

U.S. Army/ISG/Retired

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

Please see Below:-

Item # C13.

Upload a File

Date

1 / 4 / 2023



MM

DD

YYYY

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.

Retired US Army of 26 1/2 years or Type

member of American Legion

Veterans of Foreign War (VFW)

Involved with FISM Group of St Elizabeth

4-yr experience at US Military Academy

I understand this is a legal representation of my signature.

West Point, New York

Clear

Signature: Sign M. Hamm 11-11-2023

Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant. Once submitted, your application will be submitted to the City Clerk.

**NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD**

Spam Protection. Please answer this simple question.

3, 4, 7, 10 : which of these is the largest?

Submit

COMMISSION/COMMITTEE APPLYING FOR: Veterans Commission

Item # C13.

Name Richard Tran

Address Type Residence

Address

City Milpitas

Postal/Zip Code 95035

Mobile Number

E-Mail Address @gmail.com

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

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

Branch of Military Air Force (ANG)/DD214

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

Proud to serve.

Date Jan 03, 2023

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.

Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant. Once submitted, your application will be submitted to the City Clerk.

NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

City Clerk's Office

JAN 11 2023

RECEIVED

**CITY OF MILPITAS COMMISSION/COMMITTEE  
APPLICATION**

For residence of Milpitas, California ONLY.

COMMISSION/COMMITTEE APPLYING FOR: \*

VETERANS COMMISSION

Name

LEO

GARCIA

First

Middle

Last

Address Type

☒ Residence☐ Business

Address

City

MILPITAS

Postal/Zip Code

95035

Mobile Number

###

###

####

E-Mail Address \*

@ yahoo.com

Present Employer

SRS DISTRIBUTION - ROOFLINE SUPPLY

Other Phone

408 - 510 - 1092

###

###

####

Business Address (Optional)

Item # C13.

City

Postal / Zip code

Occupation

TERRITORY MANAGER

Education: If Youth Advisory Commission applicant, indicate your grade/school:

College, Professional, Vocational, or other schools attended

Major Subject

Degree

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

Name of Organization

Member

MILPITAS NATURAL LITTLE LEAGUE

V.P

Name of Organization

Member

Name of Organization

Member

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

Branch of Military

Officer

MARINE CORP

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

RELIEVED LETTERS OF ACCOMODATIONS WHILE SERVING  
MERITORIOUS MAST.

Upload a File

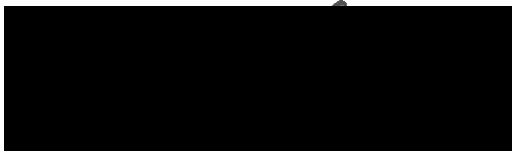
Date

11 / 14 / 2022 

MM DD YYYY

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.

or Type



LEO GARCIA

11/14/2022

☒ I understand this is a legal representation of my signature

[Clear](#)

Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. **Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant. Once submitted, your application will be submitted to the City Clerk.**

**NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD**

Spam Protection. Please answer this simple question.

3, 4, 7, 10 : which of these is the largest?

Submit



## CITY OF MILPITAS AGENDA REPORT (AR)

|                      |                                                                                                                                                                                                                                    |
|----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Item Title:</b>   | <b>Adopt a Resolution to End the Emergency Proclaimed by then Interim City Manager on March 12, 2020, and Ratified by the City Council on March 17, 2020 (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3056)</b> |
| <b>Category:</b>     | Consent Calendar-Public Safety                                                                                                                                                                                                     |
| <b>Meeting Date:</b> | <b>3/7/2023</b>                                                                                                                                                                                                                    |
|                      | <u>Recommendation:</u> Adopt a resolution of the City Council of the City of Milpitas for Termination of the Proclamation of Local Emergency regarding Novel Coronavirus (COVID-19).                                               |

### **BACKGROUND:**

In March 2020, the World Health Organization (WHO) declared COVID-19 a global pandemic. As the virus spread through California, the Governor's Office of Emergency Services and the County Office of Emergency Management declared emergency proclamations. The City of Milpitas' Emergency Services Director, the then Interim City Manager Steve McHarris, signed the Milpitas Emergency Proclamation on Thursday, March 12, 2020, and the City Council ratified it on March 17, 2020. This allowed the City to procure services nimbly and efficiently and to potentially be eligible for reimbursement from FEMA for any costs incurred as a result of the City's response to the pandemic.

### **ANALYSIS:**

The declaration of the local state of emergency allowed the City to coordinate public health response to reduce transmission and illness severity, provide assistance to health care providers, coordinate and mitigate public services that were disrupted from this emergency, and mitigate any other effects of this emergency on the residents of Milpitas. It also allowed the City to submit costs incurred as a result of the pandemic, to FEMA for reimbursement.

With COVID-19 related hospitalizations and deaths dramatically reduced due to the state's vaccination and public health efforts, Governor Newsom issued a proclamation terminating the state's COVID-19 State of Emergency on February 28, 2023. Santa Clara County also transitioned out of the emergency phase of the pandemic by the end of February, to align with the State's action. Staff is recommending ending the local state of emergency, in alignment with actions of the State and County.

### **POLICY ALTERNATIVE:**

Not Applicable

### **FISCAL IMPACT:**

None

### **California Environmental Quality Act (CEQA):**

Not applicable.

**RECOMMENDATION:**

Adopt a resolution of the City Council of the City of Milpitas for Termination of the Proclamation of Local Emergency regarding Novel Coronavirus (COVID-19).

**Attachments:**

1. Draft Resolution

**RESOLUTION NO. \_\_\_\_\_****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS FOR  
TERMINATION OF THE PROCLAMATION OF LOCAL EMERGENCY REGARDING  
NOVEL CORONAVIRUS (COVID-19)**

**WHEREAS**, California Government Code Section 8630 authorizes local agencies to proclaim local emergencies when such events occur as are defined by California Government Code Section 8558(c); and

**WHEREAS**, Milpitas Municipal Code Title V, Chapter 1, Section 4.02-1 of the City of Milpitas empowers the City Manager as the Director of the Emergency Services to proclaim the existence or threatened existence of a local emergency when the City of Milpitas is affected or likely to be affected by a public calamity and City Council is not in session; and

**WHEREAS**, on March 4, 2020, California Governor Newsom declared a State of Emergency to make additional resources available, formalize emergency actions already underway across multiple State agencies and departments, and help the state prepare for broader spread of COVID-19; and

**WHEREAS**, the County of Santa Clara and the Department of Public Health proclaimed a local and public health emergency as a result of reported cases and deaths related to COVID-19; and

**WHEREAS**, the Milpitas Director of Emergency Services and then Interim City Manager proclaimed a local state of emergency related to the COVID-19 pandemic on March 12, 2020; and

**WHEREAS**, the Milpitas City Council ratified by Resolution No. 8953 the proclaimed local state of emergency related to COVID-19 on March 17, 2020; and

**WHEREAS**, Government Code section 8630 generally requires the City Council to review the need for continuing the local emergency at least every sixty (60) days, but as part of Governor Gavin Newsom's March 4, 2020 Declaration of a State of Emergency in California due to COVID-19, that provision was waived for the duration of the statewide emergency, allowing the City to maintain its emergency in place until terminated by the City Council; and

**WHEREAS**, on February 28, 2023, California Governor Newsom issued a proclamation terminating the state's COVID-19 State of Emergency; and

**WHEREAS**, Santa Clara County transitioned out of the emergency phase of the pandemic in February of 2023, to align with the State's action; and

**WHEREAS**, the City of Milpitas wishes to end the State of Emergency declared on March 12, 2020 and thereafter ratified by Council resolution on March 17, 2020.

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

1. The local Emergency Order Proclamation made by the Director of Emergency Services and Interim City Manager on March 12, 2020 as ratified and adopted by the Milpitas City Council by Council Resolution No. 8953 on March 17, 2020 is hereby terminated.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Suzanne Guzzetta, City Clerk

\_\_\_\_\_  
Carmen Montano, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael Multipassi, City Attorney



## CITY OF MILPITAS AGENDA REPORT (AR)

|                      |                                                                                                                                                                                                                                                                                                                                                                 |
|----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Item Title:</b>   | <b>Conduct a Public Hearing for the 2023 Weed Abatement Program and Adopt a Resolution to Abate the Weeds (Staff Contact: Arthur Belton, Deputy Fire Chief/ Fire Marshal, 408-586-3384)</b>                                                                                                                                                                     |
| <b>Category:</b>     | Public Hearings-Public Safety                                                                                                                                                                                                                                                                                                                                   |
| <b>Meeting Date:</b> | 3/7/2022                                                                                                                                                                                                                                                                                                                                                        |
|                      | <u>Recommendation:</u> Conduct a Public Hearing and adopt a resolution directing the County of Santa Clara Consumer and Environmental Protection Agency- Weed Abatement Program to abate the nuisance, keep an account of the cost, and embody such account in a report and assessment list to the City Council in accordance with the Milpitas Municipal Code. |

### **BACKGROUND:**

Fire risk in California with regards to climate has been steadily increasing each wildfire season. Much of the loss to property and life is attributed to areas known as Wildland Urban Interface (WUI) where housing development has been integrated into traditionally open land space, but some notable fire storms have not been limited to only WUI, resulting in rapid fire spread within fully developed city landscapes. Three factors that contribute to wildfire behavior and spread are weather, topography and fuel load. Of these factors, fuel load is the one that can be engaged proactively to reduce the risk of fire initiation and spread. As a result, community fire prevention efforts focus on factors such as fuel reduction and defensible space. Weeds are significant contributors to initial and escalating fire growth. Categorized as light, flashy fuels, they are an easily ignitable fuel source that burns rapidly, increasing fire risk both in frequency and size. For many years Milpitas has been successful in reducing the fire risk of these light, flashy fuels through a weed abatement program.

On February 2, 1976, an Agreement was established and approved to abate weeds by the County of Santa Clara for the City of Milpitas. On June 21, 2022, City Council approved an amended and restated agreement, authorizing the City Manager to execute and sign the updated agreement. The purpose of the Agreement is to promote the efficiency and economy of operations in the abatement of weeds by the City and the County. The major procedural functions to be performed by the County and / or City shall include but not limited to:

1. The County shall prepare the list of parcels requiring abatement of weeds in the City and transmit the said list to the City for review and approval for processing.
2. The County shall prepare the notice of weed abatement and cause such notice to be mailed to the owners of the parcels requiring weed abatement.
3. The City Council shall conduct public hearings on the proposed removal of weeds pursuant to the provisions of the City Ordinance when the City Fire Marshal presents such appropriate resolutions for adoption. The City Council may by resolution declare the weeds on the respective parcels of the land as nuisance and make the determination to proceed with the abatement of weeds, and authorize the performance of the service to remove the weeds in accordance with the aforementioned Agreement.
4. Upon proper authorization by the City, the County shall remove the weeds on the designated properties.
5. The County shall render to the City an itemized assessment report for the cost of the weed abatement services performed per the respective parcels.

6. The City Council, after a public hearing, shall require the County Assessor's Office to include the costs of the weed abatement services performed for the City for the current year, as a special assessment on bills for taxes levied against the affected parcels. Such special assessments shall be liens on the respective properties.
7. Pursuant to California Health and Safety Code 14915, a copy of the report, as confirmed, shall be turned over to the auditor of the county, on or before the tenth day of August following such confirmation, and the auditor shall enter the amounts of the assessments against the respective parcels of land as they appear on the current assessment roll, (Amended by Stats. 1939, Ch. 354).

### **ANALYSIS:**

On February 7, 2023, the City Council adopted Resolution No. 9215 declaring weeds on certain described properties to be a public nuisance, and to set a public hearing for March 7, 2023. A copy of the resolution was forwarded to the County of Santa Clara Consumer and Environmental Protection Agency- Weed Abatement Program (County). A notice for the public hearing was sent by the City Clerk's Office to the local newspaper for publication. Additionally, the notice was mailed to owners of the properties proposed for abatement by the City of Milpitas and the County. The purpose of the public hearing is for the parcel owners who object to the removal of the weeds to state their objections before the weeds are removed and the costs made as a lien upon the property. A list of properties to be abated is included in the City Council's agenda packet along with a resolution directing the County to abate the weeds.

### **POLICY ALTERNATIVE(S):**

#### **Alternative 1: Not pass a resolution**

Pros: None

Cons: This would reverse a long-standing agreement with Santa Clara County to provide weed abatement service within the City of Milpitas

Reason for Not Recommending: Without a resolution, property owners will not be notified and weed abatement will not be conducted. Weeds covered under this program, classified as "light flashy fuels" are prone to easy ignition and contribute significantly to rapid fire growth. Left unmitigated, these weeds pose a significant public safety issue in terms of fire potential.

### **FISCAL IMPACT:**

At the first City Council meeting in August of each year during a public hearing, the City's municipal code provides that the City Council hear the assessment report for the list of weeds abated within the City, together with any objections of the property owners liable to be assessed, and to make such modifications on the proposed assessment as it deems necessary. Following adoption by the City Council, the resolution will be recorded and charges thereon become a lien on the land involved to be collected in the same manner as property taxes.

### **California Environmental Quality Act (CEQA):**

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

### **RECOMMENDATION:**

1. Open the Public Hearing and close following public comments.
2. Adopt a resolution directing the County of Santa Clara Consumer and Environmental Protection Agency- Weed Abatement Program to abate the nuisance, keep an account of the cost, and embody such account in a report and assessment list to the City Council in accordance with the Milpitas Municipal Code.

### **Attachment(s):**

Resolution with attached Exhibit A - 2023 Weed Abatement Program Commencement Report (68 parcels) for the City of Milpitas

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING THE CITY MANAGER TO CONTRACT WITH THE OFFICE OF SANTA CLARA COUNTY CONSUMER AND ENVIRONMENTAL PROTECTION AGENCY – WEED ABATEMENT PROGRAM TO ABATE WEEDS AND/OR CAUSE THE REMOVAL OF RUBBISH, REFUSE OR DIRT DECLARED TO BE A PUBLIC NUISANCE, TO KEEP AN ACCOUNT OF THE COSTS OF ABATING SUCH NUISANCE, AND TO FILE SUCH ACCOUNT IN A REPORT AND ASSESSMENT LIST WITH THE CITY COUNCIL**

**WHEREAS**, the City Council of the City of Milpitas adopted Resolution No. 9215 on February 7, 2023, declaring weeds and/or the accumulation of rubbish, refuse or dirt on the properties listed on the annual list attached hereto as **Exhibit A** to be a public nuisance and setting a public hearing in accordance with Title V, Chapter 202 of the Milpitas Municipal Code; and

**WHEREAS**, a public hearing was duly noticed as required by law and such hearing was held on March 7, 2023, to hear public comments and consider any objections to the proposed removal of the weeds, rubbish, refuse and/or dirt; and

**WHEREAS**, the City Council duly considered and overruled any objections to the proposed nuisance abatement by the Office of Santa Clara County Consumer and Environmental Protection Agency – Weed Abatement Program.

**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 hereby ordered and authorized to contract with the Office of Santa Clara County Consumer and Environmental Protection Agency – Weed Abatement Program to abate such public nuisances existing on those properties included on the attached **Exhibit A**. The Office of Santa Clara County Consumer and Environmental Protection Agency – Weed Abatement Program shall keep an account of the cost of abatement on each listed parcel and submit to the City Clerk, for confirmation by the City Council, an itemized written report showing such costs to be assessed on the listed properties as provided for in the Milpitas Municipal Code, Sections V-202-7.00 through V-202-10.00.

PASSED AND ADOPTED this 7<sup>th</sup> day of March, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Suzanne Guzzetta, City Clerk

\_\_\_\_\_  
Carmen Montano, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael Multalipassi, City Attorney

**2023 WEED ABATEMENT PROGRAM  
COMMENCEMENT REPORT  
CITY OF MILPITAS**

Exhibit A

|    | <b>Situs</b> |   |               | <b>APN</b> |            |
|----|--------------|---|---------------|------------|------------|
| 1  | 634          | N | ABEL          | ST         | 022-06-010 |
| 2  | 7280         |   | MARYLINN      | DR         | 022-07-007 |
| 3  | 549          |   | ABEL          | ST         | 022-09-028 |
| 4  | 99           | S | MAIN          | ST         | 022-24-017 |
| 5  | 111          |   | MAIN          | ST         | 022-24-040 |
| 6  | 1735         |   | CALIFORNIA    | CL         | 022-37-002 |
| 7  | 1301         |   | CALIFORNIA    | CL         | 022-38-002 |
| 8  | 81           |   | DIXON         | RD         | 026-05-021 |
| 9  |              |   | DIXON         | RD         | 026-05-023 |
| 10 | 1878 A       | N | MILPITAS      | BL         | 026-05-024 |
| 11 | 51           |   | DIXON         | RD         | 026-05-053 |
| 12 | 0            |   | (PARKING LOT) |            | 026-06-012 |
| 13 | 1720         |   | ARIZONA       | AV         | 026-07-016 |
| 14 | 1750         |   | ARIZONA       | AV         | 026-07-044 |
| 15 | 1840         |   | ARIZONA       | AV         | 026-07-051 |
| 16 | 0            |   | BOTHELO       | LN         | 028-23-017 |
| 17 | 0            |   |               |            | 028-24-006 |
| 18 | 1301         |   | CALLE         |            | 029-05-012 |
| 19 | 880          |   | EVANS         | RD         | 029-06-003 |
| 20 | 666          |   | EVANS         | RD         | 029-06-008 |
| 21 | 860          |   | EVANS         | RD         | 029-06-016 |
| 22 | 826          |   | CALAVERAS     | DR         | 029-06-031 |
| 23 | 898          |   | CALAVERAS     | DR         | 029-06-038 |
| 24 | 322          |   | PARK          | DR         | 029-16-006 |
| 25 | 1220         |   | COUNTRY       | DR         | 029-52-014 |
| 26 | 1039         |   | CAMARILLO     | CT         | 029-52-015 |
| 27 | 673          |   | QUINCE        | LN         | 029-59-014 |
| 28 | 517          |   | VISTA RIDGE   | DR         | 042-30-009 |
| 29 | 519          |   | VISTA RIDGE   | DR         | 042-30-010 |
| 30 | 529          |   | VISTA RIDGE   | DR         | 042-30-015 |
| 31 | 410          |   | VISTA RIDGE   | DR         | 042-30-024 |

|    |      |             |    |            |
|----|------|-------------|----|------------|
| 32 | 350  | VISTA RIDGE | DR | 042-30-025 |
| 33 | 531  | VISTA RIDGE | DR | 042-30-029 |
| 34 |      | MAIN        | ST | 083-07-015 |
| 35 | 540  | ABEL        | ST | 083-13-013 |
| 36 | 91   | W MONTAGUE  | EX | 083-42-002 |
| 37 | 526  | MAIN        | ST | 086-25-011 |
| 38 | 0    |             |    | 086-25-018 |
| 39 |      | S MAIN      | ST | 086-25-028 |
| 40 |      | NO SITUS    |    | 086-25-030 |
| 41 | 808  | MAIN        | ST | 086-25-051 |
| 42 |      | NO SITUS    |    | 086-26-039 |
| 43 |      | NO SITUS    |    | 086-26-040 |
| 44 |      | NO SITUS    |    | 086-26-042 |
| 45 | 0    | MILPITAS    | BL | 086-28-006 |
| 46 | 0    | VISTA       | WY | 086-29-005 |
| 47 |      | WRIGLEY     | WY | 086-29-036 |
| 48 |      | YOSEMITE    | DR | 086-29-047 |
| 49 | 876  | YOSEMITE    | DR | 086-30-047 |
| 50 |      | YOSEMITE    | DR | 086-30-048 |
| 51 |      | AMES        | AV | 086-30-060 |
| 52 | 0    |             |    | 086-31-003 |
| 53 | 0    |             |    | 086-32-084 |
| 54 | 1646 | CENTRE      | DR | 086-33-110 |
| 55 | 0    |             |    | 086-41-014 |
| 56 | 375  | DEMPSEY     | RD | 088-01-002 |
| 57 | 335  | S PARK      | DR | 088-03-019 |
| 58 | 0    | DEMPSEY     | RD | 088-04-060 |
| 59 |      | S PARK      | DR | 088-04-062 |
| 60 | 0    | DEMPSEY     | RD | 088-04-076 |
| 61 | 534  | S PARK      | DR | 088-06-039 |
| 62 | 2013 | YOSEMITE    | DR | 088-20-023 |
| 63 | 575  | CARLSBAD    | ST | 088-20-102 |
| 64 | 632  | CARLSBAD    | ST | 088-20-125 |
| 65 | 1966 | YOSEMITE    | DR | 088-26-149 |
| 66 | 0    | OLD         | RD | 092-34-008 |

|    |      |          |    |            |
|----|------|----------|----|------------|
| 67 | 1250 | PIEDMONT | RD | 092-34-014 |
| 68 | 2235 | URIDIAS  | RD | 092-37-050 |

68 records of 68



## CITY OF MILPITAS AGENDA REPORT (AR)

|                      |                                                                                                                                                                                                                                                                                       |
|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Item Title:</b>   | <b>Update on Street Sweeping Pilot Project Expansion (CIP #3455) (Staff Contact: Elaine Marshall, Deputy Public Works Director, (408) 586-2603)</b>                                                                                                                                   |
| <b>Category:</b>     | Community Services and Sustainable Infrastructure                                                                                                                                                                                                                                     |
| <b>Meeting Date:</b> | 3/7/2023                                                                                                                                                                                                                                                                              |
|                      | <u>Recommendation:</u> Receive a presentation on the options for expanding the Pilot Street Sweeping Program and support staff's recommendation to perform additional survey work and return to the Mayor and City Council to discuss next steps following completion of the surveys. |

### **BACKGROUND:**

The City of Milpitas has an exclusive franchise agreement with Milpitas Sanitation, Inc. (MSI) for solid waste and recycling services including street sweeping. Streets are swept in residential areas twice per month between 8am-5pm on designated street sweeping days. In commercial areas, streets are swept weekly between midnight and 8am.

The Street Sweeping Pilot Project (CIP #3455) (Pilot) was approved as part of the 2019-2024 Capital Improvement Program. The goal of the Pilot was to assess the cost effectiveness of Parking Enforced Street Sweeping. The Pilot was developed in 2020-2021 with the goal of facilitating cleaner streets, reducing litter impacts to the waterways, and beautifying neighborhoods and implemented in four pilot residential areas. In order to achieve these goals, "No Parking" During Street Sweeping Signage was installed in the four pilot areas to notify residents of a specific 2-hour timeframe of when to move their vehicles off the street so that the street sweeper can fully access the street to be able to fully clean and remove debris and litter. In these Pilot areas, streets are split and each side is swept once a month, during a specific 2-hour window (10am-12pm), allowing residents to move their vehicles to the other side of the street that is not swept.

Factors taken into consideration when determining the four Pilot areas included: alignment with the City's Trash Load Reduction Plan to pinpoint areas that are highly impacted by litter, MSI's identification of street sweeping issue spots, Public Works Streets Division staff identification of streets with parking and litter impacts, and visual trash assessments based on the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) "on-land visual trash assessments" protocol.

In March 2021, the City implemented the one-year Street Sweeping Pilot Program by installing "No Parking" signage in the Pilot areas, which comprise of approximately six curb miles, or just over 1.5% of the 350 residential curb miles in the City.

At the June 14, 2022 City Council meeting, staff provided an update of the Pilot including an analysis of the effectiveness of the program. Highlights include:

- 82% reduction in the number of parked vehicles over the course of the pilot
- 28% increase in the percentage of street curb accessible by the street sweeper (from 66% to 94%)
- Increase in the amount of debris and litter being swept by the street sweeper instead of entering the storm drains and waterways

Despite the Pilot's effectiveness, staff identified ongoing challenges including the remaining number of parked vehicles that continue to block street sweeper access and the City's limited resources to continue to conduct parking enforcement in the ongoing areas as well as potential expanded areas. The City Council accepted the

presentation and directed to staff to explore options for expanding the Pilot to other areas of Milpitas including cost impact.

### **ANALYSIS:**

Recognizing that expanding Parking Enforced Street Sweeping citywide is cost prohibitive, the City Council approved several criteria to ensure that the expanded program would maximize cost effectiveness. The expanded areas would need to meet the following criteria:

- At least 40% of the street is blocked on street sweeping days during the street sweeping window
- Area is identified in the City's Long-Term Trash Plan as being impacted by trash
- Visible litter and debris on street based on On-Land Visual Trash Assessment conducted by staff (at least moderately impacted by trash)
- At least 50% of homes in the neighborhood show interest and support "No Parking" signage and enforcement
- Minimum of one curb mile required for new neighborhoods to be added to the Street Sweeping Pilot Program for operational efficiency

MSI provided City staff with a list of streets to be evaluated for potential expansion of the Pilot based on their operational experience and familiarity with areas with high parking impact on street sweeping day. Additionally, Solid Waste staff met with the Public Works Streets team to further identify areas to be included in the evaluation, reviewed resident requests, and reviewed areas with historic street sweeping complaints.

Based on the input received from MSI, City staff, and residents, approximately 31 curb miles appear to meet one or more of the above criteria and were analyzed by Solid Waste staff. This represents approximately 9% of the residential streets in the City. Although the pilot areas were mainly in the eastern part of Milpitas, the residential neighborhoods evaluated were spread throughout the city, and included north, west, and southwest Milpitas. While most of these neighborhoods were areas with predominantly single-family homes, there were small clusters of areas with multi-family units. Additionally, some areas also surrounded schools and/or parks. Neighborhoods reviewed include: Ridgewood Park (Perry), Milford Village (Carnegie), Sunnyhills (Dixon Landing), Sylvan Gardens and Granada Condos (Junipero), Milpitas Manor (Redwood), Milpitas Rancho and Indian Hills (Yosemite), and Thos Russell (Washington). Solid Waste staff collected data in the potential expansion areas for a month, concentrating on parking impacts and visual trash assessments. In that month, staff were in each area twice during street sweeping. Additionally, staff captured street and neighborhood characteristics, such as curb length along the street and housing type.

The areas reviewed and results are shown in Figure 1, followed by more detailed discussion of the evaluation results.

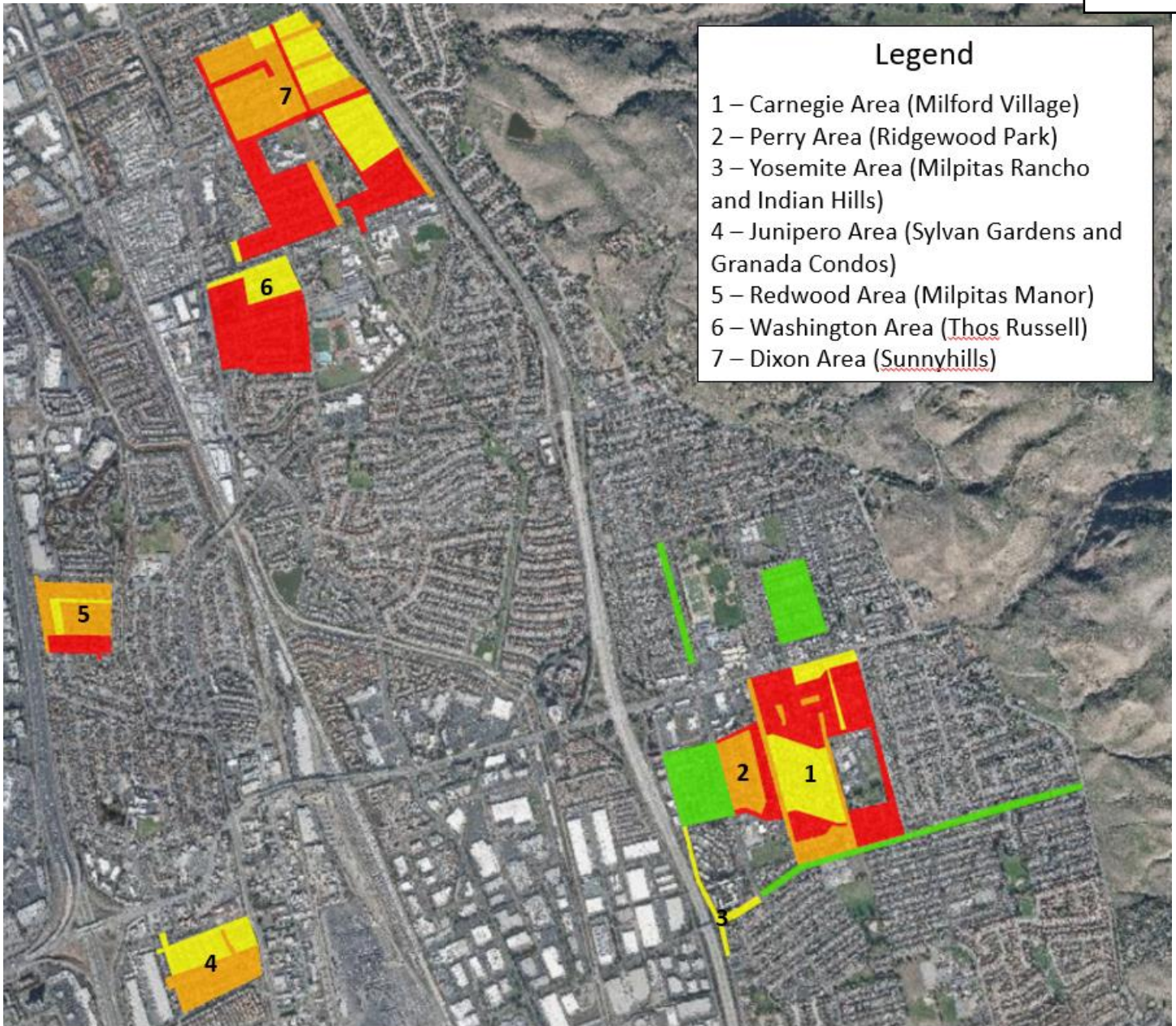


Figure 1: Green areas are where the current Street Sweeping Pilot is operating. Potential expansion areas are yellow (meets criteria) and orange (borderline), as identified and analyzed by staff. Red areas are where the streets do not meet expansion criteria.

#### *Evaluation and Data Review*

##### Parking Impact

Focusing specifically on whether at least 40% of the street is impacted by parking during street sweeping days, Figure 2 shows the number of streets evaluated in each area that met the parking impact threshold, are borderline, or do not meet the threshold.

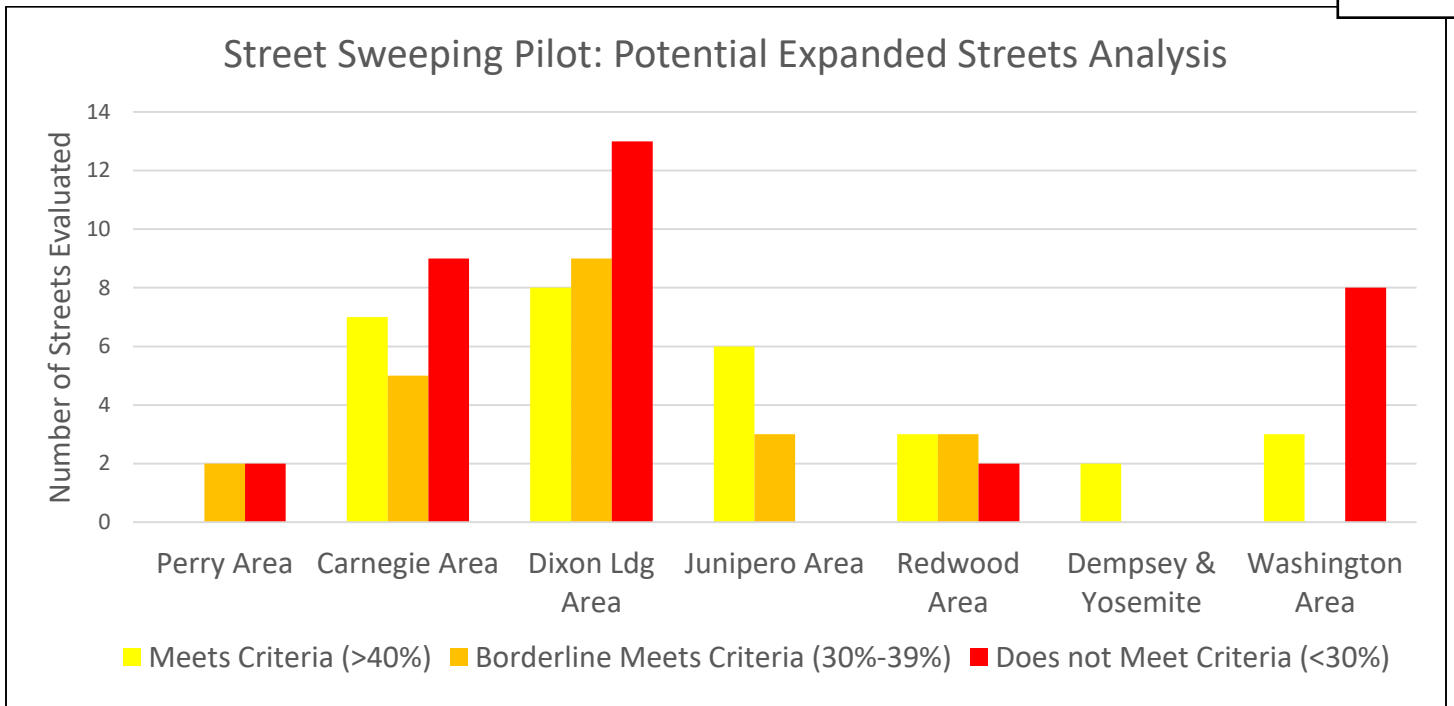


Figure 2: Streets analysis of potential expansion areas

#### Presence of Litter

Of the potential expansion areas analyzed, none were identified in the City's Long-Term Trash Plan, as these areas are mostly cleaner, residential areas. Additionally, while there were some small pockets along certain streets with very little litter and debris, overall, the areas evaluated were found to be free of litter and trash. The one exception is the Yosemite Dr and Dempsey Rd intersection, where either a few pieces of trash were easily observed and/or small clumps of litter were visible. This area also receives frequent resident complaints regarding street sweeping and proves to be difficult, in part, because only one side of Dempsey Rd is available for street parking and there are several large multi-family complexes nearby.

#### Operation Efficiency

Additionally, staff evaluated streets and the surrounding neighborhood and considered routing efficiencies and whether to include/not include specific streets based on operational logistics. For example, in order to maximize logistical efficiency, a minimum of one curb mile should be required for new neighborhoods to be added to the street sweeping pilot program or some additional streets were included as due to routing.

The current Pilot is in four areas, and streets are swept on either the 1st or 3rd Fridays and the 2nd or 4th Mondays of each month in those areas (each side of the street is only swept once per month to allow for cars to park on the other side). Streets in the potential expansion areas fall on these days of the week as well as new street sweeping days. In order to minimize operational costs, MSI would continue to use its backup street sweeper for any additional areas. This eliminates the need for large capital investment of purchasing a new street sweeper and additional driver. This limits new street sweeping expansion areas to no more than seven miles per day.

#### Areas Meeting Expansion Criteria

Based on parking impacts alone, of the 31.66 curb miles evaluated (85 streets), approximately 48% of the areas did not meet the threshold. Overall results are summarized in the table below:

| Findings                                               | Curb Miles                    |
|--------------------------------------------------------|-------------------------------|
| Meets the 40% parking impact threshold                 | 7.81 curb miles (29 streets)  |
| Within threshold borderline - 30% - 39% parking impact | 8.59 curb miles (22 streets)  |
| Does not meet threshold – below 30% parking impact     | 15.26 curb miles (34 streets) |

### Neighborhood Support

Staff has analyzed all Council approved criteria except for amount of neighborhood support for the program. This remaining criteria takes into account resident input and requires at least 50% of homes in the neighborhood showing interest and support for street sweeping “No Parking” signage and enforcement, and is similar to the street sweeping signage process in the City of San Jose and the City of Alameda. In San Jose, “No Parking” street sweeping signage is requested by residents, neighborhood groups, or Councilmembers. While there is not a formal petition, San Jose staff keeps a list of locations that are requested or that staff recommends. Once funding becomes available, staff reviews all of the locations and submits a list of areas to City Council Office staff who reaches out to the community. Council staff then provides recommended areas based on community feedback, and staff compiles a final list for installation. In Alameda, requests to install “No Parking” street sweeping signage must come from a resident, business, or property owner. Due to the neighborhood impact of the signage, Alameda requires a petition that is signed by at least 50% of the dwelling units on the requested block. Staff analysis does not begin unless the petition is signed by at least 50%.

In order to determine whether a street/neighborhood prioritizes street sweeping or unrestricted parking, staff could conduct outreach in the yellow potential expansion areas to gauge support for No Parking During Street Sweeping signage. The outreach could include sending postcards and doorhangers explaining the Parking Enforced Street Sweeping program with a return survey postcard to express interest and support. Staff would tally the responses to determine if the 50% support criteria is met. Staff would also reach out to neighborhood leaders in the area. The initial timing of this outreach is expected to take approximately four months and is outlined below.

| Proposed Outreach Activities and Timeline |                                                                                                                                                                                            |
|-------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Months 1 & 2                              | <ul style="list-style-type: none"> <li>• Design Outreach Postcards/Doorhangers with return survey</li> <li>• Translate Outreach</li> <li>• Update Street Sweeping Pilot Website</li> </ul> |
| Month 3                                   | <ul style="list-style-type: none"> <li>• Postcards/Doorhanger Printing and Distribution</li> <li>• Contact Neighborhood Leaders in Potential Expansion Areas</li> </ul>                    |
| Month 4                                   | <ul style="list-style-type: none"> <li>• 10 Days for Responses</li> <li>• Analyze Responses</li> </ul>                                                                                     |

An additional round of outreach could be conducted if initial response is low.

### Cost and Resource Analysis

CIP #3455 was approved for \$400,000, with an additional \$300,000 of CIP funds added in 2022. As of the end of 2022 (12/31/22), Street Sweeping Pilot costs are approximately \$146,000, with a remaining available budget of \$554,000 to continue the pilot areas and to expand to additional areas.

Expanding the Street Sweeping Pilot would require both one-time funding and on-going funding:

|                                       |                                                                                                                                                          |
|---------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|
| One-time costs for expansion outreach | Outreach and Education to potential areas to gauge community support                                                                                     |
| One-time costs                        | Staff evaluation and administration of new areas;<br>Fabrication and installation of new No Parking Signage;<br>Outreach and Education to Expanded Areas |
| On-going costs                        | Community Service Officers for ongoing parking enforcement;<br>MSI Street Sweeping costs using back-up street sweeper                                    |

## Estimated Costs

### One Time Costs

Based on the evaluation conducted by staff, if the community supported expanded the Pilot to all the additional areas meeting the parking criteria, total estimated costs for new signage is \$116,000. Up to an additional \$30,000 would be needed for staff administration and outreach and education for the expanded areas. Total estimated one-time costs, not to exceed \$146,000, is available in CIP 3455.

| Potential New Areas | Street Sweeping Pilot Areas - Potential Streets and Signage Costs |                                                                                                                   |                   |                        |
|---------------------|-------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|-------------------|------------------------|
|                     | Street Sweeping Days of the Month                                 | Locations                                                                                                         | Total Curb Miles* | Estimated Sign Costs** |
|                     | 1st and 3rd Fridays                                               | <b>Carnegie:</b> Ashland Dr, Monmouth Dr, Mercury Ct, Saturn Ct, Jupiter Dr, Jupiter Way, Lawton Dr               | 1.72              | \$ 25,500              |
|                     | 2nd and 4th Monday                                                | <b>Dempsey:</b> Dempsey Rd, Yosemite Dr                                                                           | 0.67              | \$ 10,000              |
|                     | 1st and 3rd Tuesday                                               | <b>Redwood:</b> Heath St, Maple Ave, Larch St                                                                     | 2.03              | \$ 14,000              |
|                     | 1st and 3rd Wednesday                                             | <b>Dixon Landing:</b> Rand St, Greathouse Dr, Woodcock Ct, Matthews Ct, Toscano Ct, Levin St, Gross St, Gosser St | 5.10              | \$ 27,800              |
|                     | 2nd and 4th Tuesday                                               | <b>Junipero:</b> Junipero Dr, Rio Verde Pl, San Miguel Ct, San Petra Ct, Ethyl Ct, Corning Ave                    | 2.76              | \$ 27,500              |
|                     | 2nd and 4th Wednesday                                             | <b>Washington:</b> Washington Dr, Vargas Ct, Pashote Ct                                                           | 0.76              | \$ 11,200              |
|                     | <b>Total Estimated Sign Costs =</b>                               |                                                                                                                   |                   | <b>\$ 116,000</b>      |
|                     | <b>Staff Administration and Outreach and Education =</b>          |                                                                                                                   |                   | <b>\$ 30,000</b>       |
|                     | <b>TOTAL Estimated One-Time Costs =</b>                           |                                                                                                                   |                   | <b>\$ 146,000</b>      |
|                     | <b>TOTAL Estimated Ongoing Street Sweeping Costs =</b>            |                                                                                                                   |                   | <b>\$ 11,000</b>       |

\*Total curb miles includes both meets criteria and borderline areas

\*\*Estimated sign costs includes materials, fabrication, installation, and labor.

Figure 3: Estimated Financial Costs of Potential Expansion Areas

### Ongoing Costs for Operations

Since the Pilot area is small compared to the size of the entire City, MSI has to use an additional sweeper to work in the pilot areas, at the current estimated costs of \$21,000 per year. If the pilot program is expanded to the additional yellow areas, the estimated ongoing costs would be an additional \$11,000 per year.

### Ongoing Costs for Parking Enforcement Resources Needed

Under the initial Pilot, the Community Service Officers (CSO) in the Police Department conducted parking enforcement and costs are absorbed by the Police Department. However, the work load and on-going costs for parking enforcement cannot continue to be covered by the Police Department as the CSOs have other public safety priorities and work. In order to provide parking enforcement for an expanded Parking Prohibited Street Sweeping Program, the City would need to determine how to provide that additional service. Potential alternatives, some of which could require a meet and confer process, include:

- Contracting out street sweeping parking enforcement to supplement current CSO enforcement activities;
- Creating a part-time classification for a Parking Enforcement/Compliance Officer;
- Adding a full-time CSO position that would be assigned to street sweeping parking enforcement as well as other duties

Several other cities contract for parking enforcement services including Union City and the City of San Mateo. Both of these cities have either contracted for street sweeping enforcement services in the recent past or are currently using contract services to supplement their parking enforcement. Based on a review of the existing contracts, the costs for the street sweeping parking enforcement services is estimated to be \$55 an hour. However, Milpitas' parking enforced street sweeping areas represent a much more limited scope compared to the other cities. In contrast, about 20% of Union City's streets have street sweeping signage. In San Mateo, besides street sweeping violations for residential parking, the contractor also enforces street sweeping for commercial areas, general parking concerns, the residential parking permit program, and the downtown commercial district. The limited scope of street sweeping enforcement areas in Milpitas may not be attractive to potential street sweeping service providers. If all yellow areas were added to the parking enforced street sweeping program, annual estimated contracted parking enforcement could cost up to \$20,000 or more. There would be additional costs for Police to manage the parking enforcement contract.

Total on-going costs, if the program was expanded to all yellow areas, for parking enforcement and ongoing MSI costs for street sweeping is estimated at \$61,000 annually.

### **Next Steps**

Direction from the City Council is needed to continue to program development, specifically in the following areas:

- Accept this staff report on the Street Sweeping Pilot project;
- Direct staff to survey residents in the identified yellow areas to gauge if there is support for Parking Prohibited Street Sweeping. Neighborhood support is the remaining criteria to determine if an area should be included in the program. There may not be more than 50% resident support in all the potential areas for the program as some residents may prioritize parking convenience over street sweeping effectiveness.

Refining the potential areas for expansion will inform the level of on-going resources needed for parking enforcement and street sweeping. Once expansion areas are confirmed, staff will be able to better estimate on-going costs for parking enforcement, either through contract services or City staff models and bring that information to City Council for consideration as part of a future budget process.

### **POLICY ALTERNATIVE(S):**

#### **Alternative 1: Keep the Street Sweeping Pilot areas as-is without expanding into additional areas.**

Pros: Will maintain cleaner streets in the Pilot areas but not require new resources or compete with other public safety priority.

Cons: Limits parking prohibit street sweeping to just a small portion of the City.

Reason for Not Recommending: City Council had previously directed staff to look at expansion opportunities.

#### **Alternative 2: Expand outreach to the orange "borderline" areas.**

Pros: Will potentially expand the project into more neighborhoods which provides cleaner streets in more areas and also increases operational street sweeping efficiencies. [Click or tap here to enter text.](#)

Cons: These areas are less impacted by parking and should be effectively serve by the existing street sweeping program. Residents may not perceive the amount of parked cars on these streets obstructs street sweeping.

Reason for Not Recommending: The orange "Borderline" areas do not meet the City Council approved thresholds for expanding the program.

### **FISCAL IMPACT:**

CIP #3455 was originally approved for of the Fiscal Year 2019-2020 Capital Improvement Program budget, in the amount of \$400,000. Council also approved an additional \$300,000 of CIP funds from Fiscal Year 2022-2023, at the May 3, 2022 City Council meeting. As of the end of 2022 (12/31/22), approximately \$146,000 has

been expended, leaving a balance of \$554,000 to be used for future street sweeping pilot expansion costs. This funding could support the existing area for up to 10 years. If the area were expanded to all yellow areas, the funding would cover about 5 years of service. Following the exhaustion of this funding, General Fund dollars of between \$61,000 and \$100,000 and would be needed annually to cover the ongoing funding needs.

**California Environmental Quality Act (CEQA):**

The project is categorically exempt under Section 15301 of the California Environmental Quality Act guidelines for maintenance of existing facilities.

**RECOMMENDATION:**

Receive a presentation on the Options for Expanding the Pilot Street Sweeping Program and support staff's recommendation to perform additional survey work and return to the Mayor and City Council to discuss next steps following completion of the surveys.

**Attachment(s):**

1. February 16, 2021 Street Sweeping Pilot Project Information Memorandum
2. October 14, 2021 Street Sweeping Pilot 6-Month Update
3. June 14, 2022 Street Sweeping Pilot AR



# MEMORANDUM

Public Works Department

**DATE:** February 16, 2021

**TO:** Mayor and Council

**THROUGH:** Steve McHarris, City Manager *Steve McHarris*

**FROM:** Tony Ndah, Public Works Director

**SUBJECT:** Update of Street Sweeping Pilot Project

This memorandum provides information about the City's Street Sweeping Pilot Program (Pilot), Capital Improvement Program (CIP #3455). Staff have been coordinating interdepartmentally and with Milpitas Sanitation, Inc. (MSI) on this Pilot, and have conducted public outreach including informational memos, mailers, and presentations to City Commissions and the Council's Transportation Subcommittee. The Pilot will be launched on March 1, 2021 and will run for one (1) year. A summary of actions taken to date to develop the Pilot, is included in the memorandum.

## **Executive Summary**

As part of the 2019 – 2024 Capital Improvement Program, Council approved funding for a Pilot Street Sweeping program to address residents' concerns about neighborhood beautification, as well as reducing litter impacts into nearby waterways. The goal of the Pilot program is to evaluate the effectiveness of street sweeping signage in residential areas, to inform residents of when to move their vehicles off the street so that the street sweeper can access the street all the way to the curb, and maximize the collection of litter and debris.

City staff, with assistance from MSI, identified four (4) areas in the City for the Pilot. The areas were chosen based on a review of data from the City's Trash Load Reduction Plan and based on areas identified by MSI as streets where vehicle parking impacts the ability of the street sweeper to access the curb.

The Pilot is scheduled to start on March 1, 2021 and during the Pilot, parking will be prohibited from 10 am to noon on specific days in each Pilot area. Postcards and door-hangers were mailed out this month to residents with information about the Pilot and new street signs have been installed in the pilot area to notify residents of the street sweeping days. Staff are also developing a website which will include information on the Pilot program, sweeping schedules, and a look-up tool for residents to use to get information on the street sweeping day and time for their area.

The Pilot will run for one (1) year and staff will provide periodic updates to Council on the effectiveness of the Pilot program.

### **Background:**

Street sweeping services are included under the City's solid waste franchise agreement and MSI informs residents about the street sweeping program through monthly ads placed in the Milpitas Post, mailing an annual street sweeping postcard, and providing street sweeping routes and the street sweeping schedule on their website. The goal of this outreach is to inform residents of their street sweeping schedule so they can move their vehicles prior to street sweeping. However, parked vehicles blocking street sweeper access continues to be a problem in certain areas of the City. When vehicles are not moved on street sweeping days and the area is congested by street parking, the street sweeper is not able to access the curb in order to properly clean the street. The Pilot aims to install signage in several targeted residential areas to notify residents of their streets sweeping days and times so that residents can move their vehicles. This in turn will allow for more effective street sweeping and will reduce the amount of litter accumulating on local streets and prevent the debris from entering local creeks and waterways during rain events.

### **Pilot Update**

Staff have been coordinating with various departments and MSI to develop the Pilot. The major Pilot development tasks that have been completed to date include:

- Benchmarking other city street sweeping programs
- Identification of pilot areas
- Developing a Pilot Street Sweeping Schedule
- Evaluation of enforcement and citation authority
- Fabrication and deployment of signage
- Outreach to residents

### **Program Benchmarking**

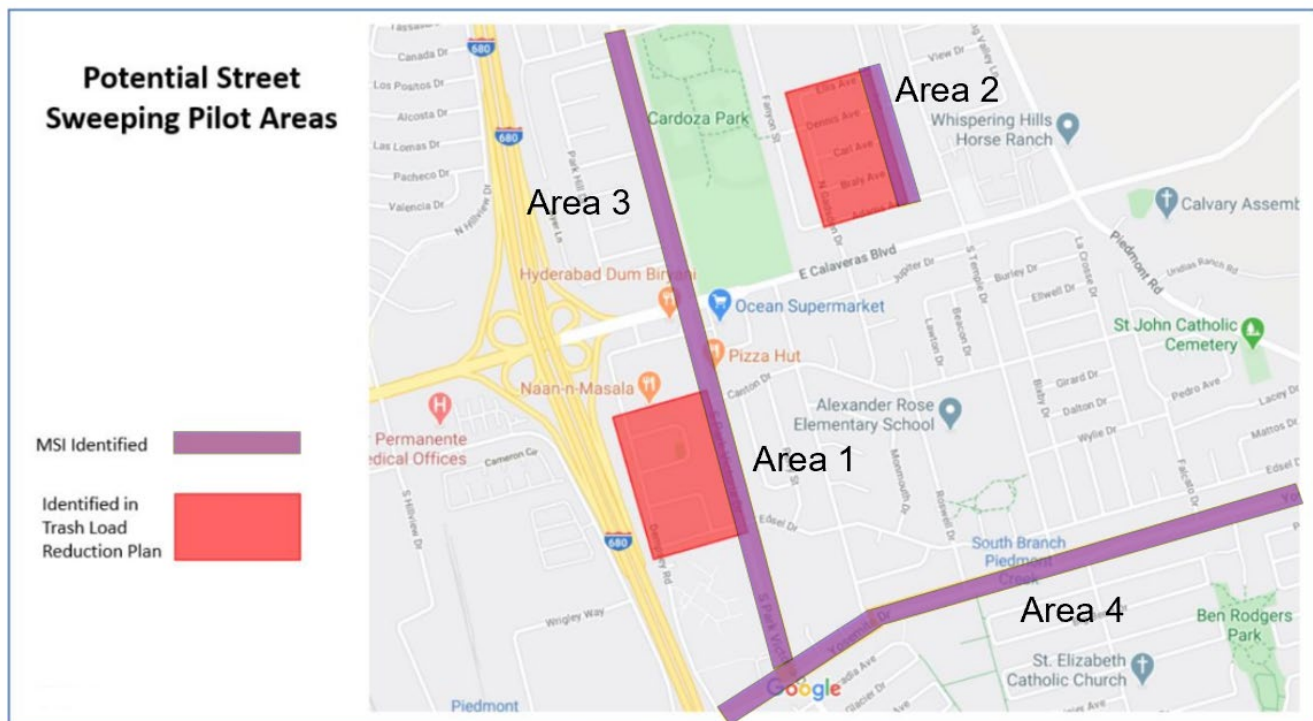
Staff have benchmarked the street sweeping programs of neighboring jurisdictions throughout the Bay Area. Factors that staff examined included: the type of street sweeping signage used (temporary or permanent), the entity performing the street sweeping (in-house, consultant, hauler), strategy for providing parking during street sweeping, enforcement authority, entity, and process, and citation amount. Specifically, two cities emerged with robust residential street sweeping programs – Union City and Hayward.

### **Pilot Area Identification**

Staff evaluated a variety of factors in order to identify Pilot areas. These included:

- areas identified in the City's Trash Load Reduction Plan as areas with litter issues that could benefit from an enhanced street sweeping,
- areas identified by MSI where parking impacts the ability of the street sweeper to access the curb,
- make-up of the neighborhood (whether single-family or multi-family),
- street type, and
- geographic location.

As a result, staff identified four areas to be included in the Pilot program shown on the map below:



- **Area 1** – this area neighbors Interstate 680 and is encompassed by Dempsey Rd, Edsel Dr, South Park Victoria Dr, and Selwyn Dr. The two main streets in the pilot are Selwyn Dr and Shirley Dr. Although South Park Victoria is composed of single-family homes, the majority of this area contains multi-family dwellings. Of the four areas, Area 1 has the most congested parking and litter/debris.
- **Area 2** – this area sits to the east of Cardoza Park and is contained by Ellis Ave, Gadsden Dr, Adams Ave, and Lynn Ave. Streets running within the boundaries include Dennis Ave, Carl Ave, and Braly Ave. Although Lynn Ave and Adams Ave have multi-family dwellings on one side of the street and single-family homes on the other side of the street, every other street in this area contains only single-family homes.
- **Area 3** – this area runs along Park Victoria Dr, a wide street, from Yosemite Dr to Kennedy Dr. Due to the presence of commercial areas from Yosemite Dr to Ayer St, the focus for this pilot will be Ayer St to Kennedy Dr, since this length is comprised of residential/single-family homes.
- **Area 4** – this area is on Yosemite Dr, from Piedmont Rd to South Park Victoria Dr. This area is mostly single-family homes and contains a small stretch where Merryhill School is located.

### Pilot Street Sweeping Schedule

Staff has coordinated with MSI to develop the street sweeping schedule for the Pilot. As the entity performing the street sweeping, MSI has insight into program logistics, scheduling, outreach, and metrics and evaluation. Staff has discussed options with MSI to ensure that the pilot locations are able to be addressed with no, or little, disruption to the existing established street sweeping schedules. As a result, the Pilot program will employ a “split street” cleaning schedule, meaning that only one side of the street will have prohibited parking during the street sweeping window in order to allow cars to be parked on the other side. Typical residential areas are swept every two weeks, while in the pilot areas, one side of the street will have a thorough sweeping once a month. During this Pilot, parking will be prohibited from 10AM to Noon on specified days in each Pilot area.

Staff have mapped out signage locations and associated street sweeping schedules in all four pilot areas. Signs have been fabricated and Staff anticipates sign installation to be completed by mid-February.

### Enforcement

Staff has identified that the City’s Municipal Code allows for street sweeping enforcement. *Milpitas Municipal Code Section V-100-12.11 - Streets Under Construction, Being Cleaned or Used for Movement of Equipment* prohibits parking a vehicle on a street or portion of a street when the street is being cleaned with authorized signage is in place. The City’s Master Fee Schedule also includes a citation amount for violations of this section. However, the City of Milpitas currently has no street sweeping signage to notify the public of street sweeping restrictions and, therefore, has not routinely used or enforced this section for street sweeping. A key component of the Pilot is the placement of new authorized signage with street cleaning information in Pilot implementation areas.

The Police Department will be assisting with this Pilot and will patrol the areas and issue warning notices to vehicles that remain parked during signed street sweeping periods. During this pilot, staff will be using signage, outreach, and warning citations to encourage vehicles to be moved during street sweeping.

### Pilot Outreach

Outreach in the form of postcards and door-hangers have been developed in multiple languages and are being sent out to residents in the Pilot areas this month. Staff are also developing a website which will include information on the Pilot, schedule, and a tool to look-up whether or not a home is in the Pilot area and if so, what the street cleaning day and time will be. The website will also include a link for non-Pilot residents to check their regular street sweeping schedule. Because this Pilot is limited to specific areas in Milpitas, staff is not recommending use of social media at this time in order to prevent confusion among households not included in the Pilot areas.

Staff has presented this information on the development of this Pilot to the Energy and Environmental Sustainability Commission, the Community Advisory Commission, and the City Council’s Transportation Subcommittee, in order to provide a status update on the project as well as to gain feedback and input on Pilot program design and proposed implementation.

**Next Steps**

Once the Street Sweeping Pilot Program is implemented, staff will begin evaluating the program on an ongoing basis, through a set of evaluation metrics which include: number of curb miles swept, volume/tonnage of material collected, number of parking warnings issued, percentage of the street blocked by vehicles, and visual audits/assessments of street cleanliness.

It should be noted that staff is sensitive to the effects of the COVID-19 pandemic and the County's shelter-in-place orders and recognizes that there may be more vehicles parked on streets currently than in pre-COVID times. As a result, the focus of the Street Sweeping Pilot will be enforcement through education and warnings, as opposed to through citations. The goal of the pilot is to provide curb access to the street sweeper so that there is effective street sweeping once parked vehicles are moved. Citations and penalties will be enforced, only if necessary.

The Street Sweeping Pilot project will be a year-long endeavor, in order to evaluate all four seasons. The Pilot is slated to start March 1, 2021 with periodic reports to the various Commissions, Transportation Subcommittee, and City Council.



## CITY OF MILPITAS AGENDA REPORT (AR)

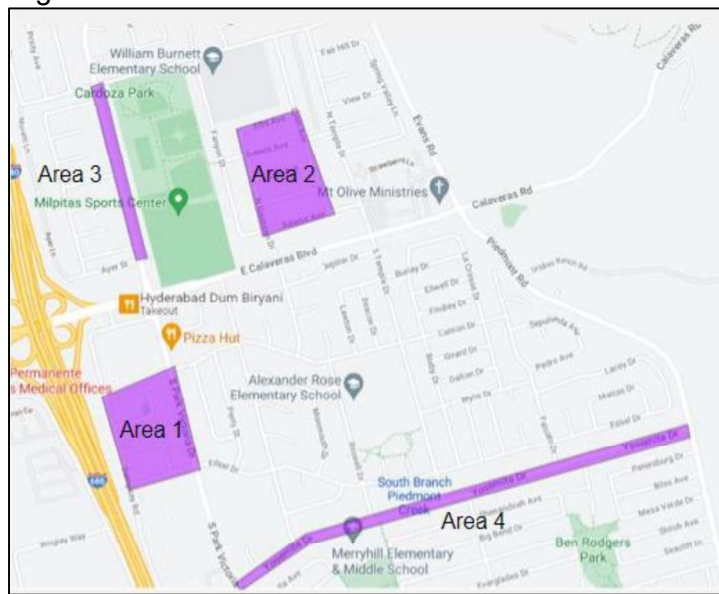
|                      |                                                                                                                                                                                |
|----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Item Title:</b>   | <b>Receive a Presentation on the Pilot Street Sweeping Program and Provide Direction to Staff (Staff Contact: Elaine Marshall, Deputy Public Works Director, 408-586-2603)</b> |
| <b>Category:</b>     | Community Services and Sustainable Infrastructure                                                                                                                              |
| <b>Meeting Date:</b> | 6/14/2022                                                                                                                                                                      |
|                      | <u>Recommendation:</u> Receive a presentation on the Pilot Street Sweeping Program and provide direction to staff.                                                             |

### **BACKGROUND:**

As part of the 2019 – 2024 Capital Improvement Program, Council approved funding for a Pilot Street Sweeping Program (Pilot) at certain locations in the City to address residents' concerns about neighborhood beautification, as well as reducing litter impacts into nearby waterways. The goal of the Pilot program was to evaluate the effectiveness of street sweeping signage in residential areas, to inform residents of when to move their vehicles off the street so that the street sweeper can access the street all the way to the curb, and maximize the collection of litter and debris.

As outlined in the February 16, 2021 Informational Memorandum (Attachment 1), City staff, with assistance from Milpitas Sanitation Inc. (MSI), identified four (4) areas in the City for the Pilot as shown in Figure 1 below. The pilot areas comprise approximately six curb miles, which is just over 1.5% of the 350 curb miles of residential streets citywide. In each pilot area, "No Parking" signs were posted for a specific 2-hour street sweeping window. The areas were chosen based on a review of data from the City's Trash Load Reduction Plan and based on areas identified by MSI as streets where vehicle parking impacts the ability of the street sweeper to access the curb.

Figure 1: Pilot Areas



Outreach in multiple languages (including post cards, door hangers, and website) to the residents in the Pilot area occurred in February 2021, while implementation of the Pilot began in March 2021 and ran through February 2022. Staff provided a report to Council on October 14, 2021 (Attachment 2) which included a 6-month update on the Pilot. In addition, staff provided updates and reported on the outcome of the Pilot to the

Transportation Subcommittee and the Energy, Community Advisory Commission, and Environmental Sustainability Commission.

Although the Pilot ended in February 2022, to minimize any disruption to current street sweeping operations in the pilot neighborhoods, the pilot street sweeping signage, sweeping schedule, and parking enforcement has remained in place pending direction from Council.

### **ANALYSIS:**

This section of the staff report outlines the program design of the Pilot, summarizes key data and findings related to the Pilot, and identifies key considerations for the continuation of the Parking Enforced Street Sweeping model.

#### **Program Design:**

The City's Franchise Agreement with Milpitas Sanitation Inc. (MSI) provides for regular street sweeping twice a month for residential streets, between 8am-5pm during the street sweeping days. While the regular street sweeping program is twice a month for residential streets, with both sides of the street swept during 8am-5pm during the street sweeping day, the streets in the Pilot areas are split and each side is swept once a month, on alternate days during a limited 2-hour time frame (10am-12pm). This allows residents to move their vehicles to the side that is not scheduled to be swept.

To determine the four residential areas included in the Street Sweeping Pilot, staff reviewed the Trash Load Reduction Plan to identify area that are highly impacted by street litter and also discussed with MSI regarding areas that were an issue for the street sweeper to have curb access. Other factors that were considered were the composition of the area (single-family versus multi-family) and the related street parking demand, geographic location in Milpitas, and street types.

Prior to implementing the Pilot, staff researched other jurisdictions (including Union City, Hayward, and San Jose), reviewed existing relevant Milpitas Municipal Code and the Master Fee Schedule, coordinated street sweeping scheduling logistics with Milpitas Sanitation, set up a system to capture field data using tablets, discussed the project internally with various departments and divisions, coordinated installation of 221 "No Parking" signs, and coordinated outreach to the four areas to notify residents of the program (postcards, doorhangers, a dedicated website).

Parking enforcement during the Pilot was conducted by the Police Department's Community Service Officers. Pilot enforcement consisted of two phases: (1) Warning notices (March 2021 – October 2021); (2) Parking Citations (November 2021 – February 2022).

#### **Data Collection and Results:**

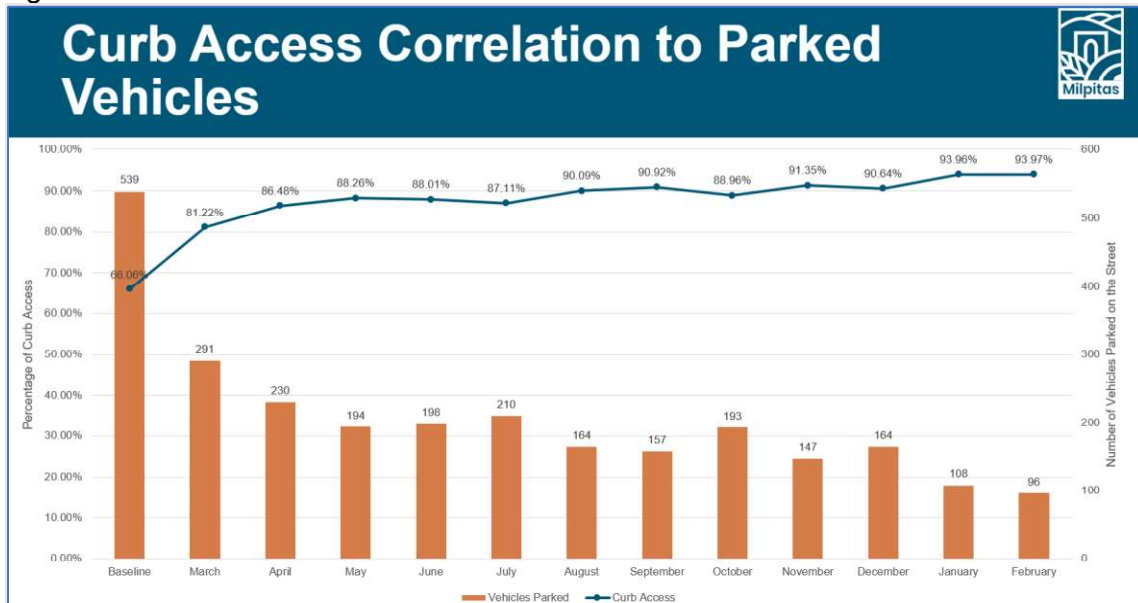
The data collection period of the Pilot concluded at the end of February 2022. Staff has reviewed and analyzed data collected throughout the Pilot period and compared baseline data collected in February 2021. Using tablets, on every street sweeping day in the Pilot areas, staff walked the neighborhoods to collect data. Metrics that were captured included: number of curb miles swept, volume/tonnage of material collected, percentage of the street blocked by vehicles, and visual trash assessments based on the Santa Clara Valley Urban Runoff Pollution Prevention Program's (SCVURPPP) "on-land visual trash assessments" protocol.

To ensure compliance with the parking regulations on street sweeping days, staff relied first on education and warnings for the first 8 months and then started to issue parking citations. The chart below (Figure 2) shows that over the course of the Pilot, many residents moved their vehicles in accordance with the No Parking During Street Sweeping signs. The most significant decrease was in the first month which resulted in a 46% reduction in parked vehicles during street sweeping. This trend of decreasing parked vehicles continued throughout the Pilot and by the end of the Pilot, there were only 96 vehicles parked during street sweeping, a reduction of approximately 82%. Along the same lines, there was an average increase in percentage of curb accessible by the street sweeper from 66% to 94%. During the period when warning notices were issued (March – October), there was an average of 204 parked vehicles, a 62% reduction. When parking citations

were issued (November 2021 to February 2022), the average number of parked vehicles further declined to 117, for incremental additional 42% reduction in average number of parked vehicles.

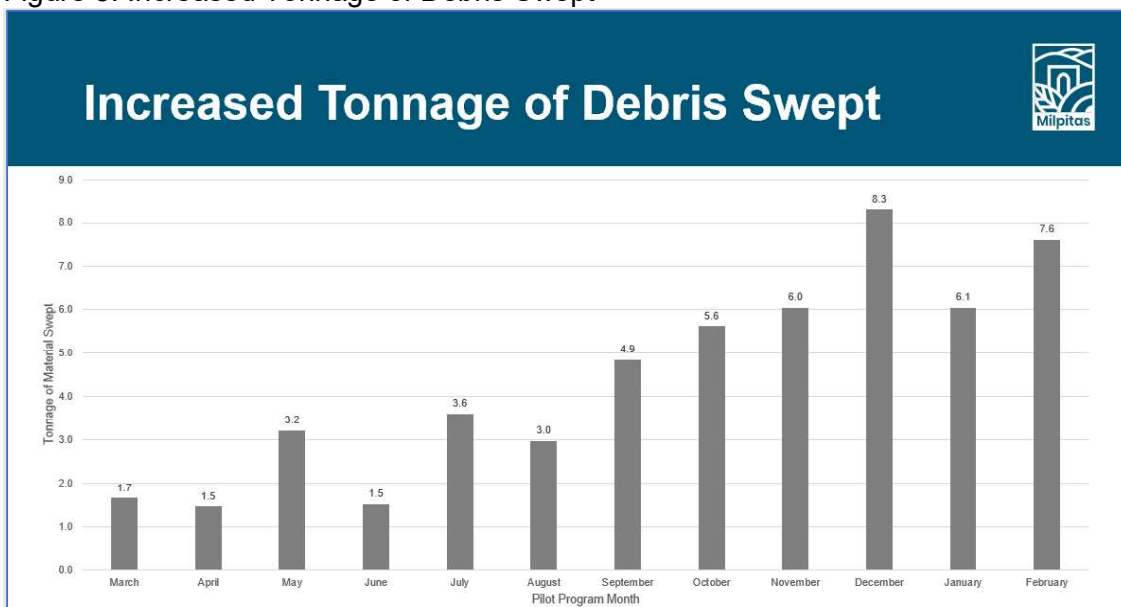
Although the number of vehicles decreased during the course of the Pilot as more residents participated by moving their vehicles and complied with the parking regulations, there was not a substantial change in the number of warnings/citations issued. This is due to capacity limitations of the CSOs who are only able to physically issue a certain number of citations in the specified timeframe. As seen in Figure 2, there remains a number of vehicles still parking on the street. Similarly, staff noticed that there are residents who continue to park their vehicles despite having received notifications/citations.

Figure 2: Curb Access Correlation to Parked Vehicles



The increased curb access led to more debris and litter being swept by the street sweeper and less material entering into the storm drains and waterways (see Figure 3). Materials that were consistently seen on the street included litter (foodware and packaging such as plastic straws and to go cups, disposable masks and gloves) and natural debris such as leaves and seed balls.

Figure 3: Increased Tonnage of Debris Swept



### Pilot Survey Results:

At the conclusion of the one-year time period, a doorhanger was distributed to all 900 residences within the boundaries of the Pilot, with a short two-minute survey to solicit feedback on the effectiveness of the Pilot. Response to the survey was limited. Of the fifteen responses that were received, there was a 46% increase in the number of residents who rated the streets “Clean” or “Very Clean” after the Pilot started; 73% believe that they received enough information regarding the Pilot; 67% believe that the signage was effective, and that street sweeping had been more effective since the start of the Pilot; and 73% support the continuation of the Pilot.

### Pilot Costs

The Pilot was approved with \$400,000 in funding to support implementation and at the conclusion of the Pilot, there was a total of \$128,000 in expenses for the Pilot, offset with \$20,000 in net revenue from parking citations. A summary of the expenditures incurred and revenue generated related to the Pilot through end of May 2022 are shown below (Figure 4). Worth noting is that the costs for the CSO time is not currently included in these figures because these costs were covered by the Police Department as part of the CSO regular job duties and the limited nature of the Pilot did not take much CSO time on a monthly basis. However, if the alternate street sweeping model as piloted were to be expanded, the Police Department will require additional staff for enforcement.

The total number of citations issued during the Pilot (from mid-November – February) was 309, with \$65 per citation issued. After deduction of mandated fees (County General Fund, State Court Facilities Fund, etc.) and a citation processing fee, the net revenue generated was \$20,085 total for the period.

| <b>Street Sweeping Pilot Cost Analysis</b>                                    |                  |
|-------------------------------------------------------------------------------|------------------|
| <b>Description</b>                                                            | <b>Amount</b>    |
| <b>Pilot Expenditures</b>                                                     |                  |
| Signage – Production and Installation                                         | \$58,000         |
| Outreach (Printing, Translations, Distribution)                               | \$5,000          |
| Milpitas Sanitation (Street Sweeper Labor)                                    | \$26,000         |
| Labor Costs (Research, implementation, data collection related to Pilot only) | \$39,000         |
| <b>Total Expenditures</b>                                                     | <b>\$128,000</b> |
| <b>Pilot Revenue</b>                                                          |                  |
| Parking Citations                                                             | \$20,085         |
| <b>Total Revenue</b>                                                          | <b>\$20,085</b>  |
| <b>Pilot Net Cost</b>                                                         | <b>\$107,915</b> |

Figure 4: Street Sweeping Pilot Expenditures and Revenue

### Conclusion and Request for Council Feedback and Direction

Overall, the Pilot data and community feedback indicate that the Pilot program has been effective at moving vehicles and reducing street litter and debris, resulting in a cleaner community in the Pilot areas. While enforced “No Parking” is an effective method to motivate movement of vehicles during street sweeping, it comes at significant additional cost to implement and is not warranted or needed citywide. Full citywide implementation would require signage be installed throughout residential neighborhoods, re-routing of all residential street sweeping routes which would necessitate that MSI purchase additional street sweepers, and the Police Department would need to potentially increase the number of CSOs in order to enforce the program. These factors make citywide implementation cost-prohibitive.

If the street sweeping model under the Pilot were to be expanded to other areas in the City, staff recommends that the City Council consider limiting the program and additional neighborhoods based on the following criteria:

- At least 40% of street is blocked on street sweeping days.
- Area is identified in City's Long-Term Trash Plan as being impacted by trash
- Visible litter and debris on streets (at least moderately impacted by trash) based on On-land Visual Trash Assessment conducted by staff
- At least 50% of single-family homes in neighborhood show interest and support "No Parking" signage and enforcement.
- Minimum of 1 curb mile required for new neighborhoods to be added to the Program.

This type of focused program expansion is consistent with programs implemented in other cities including San, Jose, Alameda, and Hayward. For example, in San Jose, new "No Parking" signs are requested by residents, neighborhood groups, or Councilmembers. Requests result in the City of San Jose Department of Transportation (DOT) inspectors reviewing the request. Due to limited resources, DOT considers installing signs only in areas where at least 40% or curb miles is impacted by vehicles.

At this time, staff seek the following feedback from the City Council:

- Should Parking Enforced Street Sweeping model be continued in the Pilot areas?
- Should Parking Enforced Street Sweeping model expand to additional areas?
- What additional criteria should be considered for expanding the Parking Enforced Street Sweeping model to additional areas?

Based on feedback from the City Council, staff will return in the Fall with recommended programmatic design, cost and resource analysis, funding options and an implementation timeline.

#### **FISCAL IMPACT:**

CIP No. 3455 was originally approved with \$400,000. As of the end of the end of May 2022, staff has spent a total of \$128,000 on the Pilot, leaving a balance of approximately \$ 272,000. Additionally, at the May 3, 2022 City Council meeting, Council approved an additional \$300,000 in funds to be added to the CIP program in FY2022-2023 bringing the total funding available for potential program continuation and expansion to \$572,000.

It is important to note that an expansion of the alternative street sweeping model requires one-time resources (e.g.: installation of the parking signs) and ongoing resources (e.g.: staff for enforcement).

#### **California Environmental Quality Act (CEQA):**

The project is categorically exempt under Section 15301 of the California Environmental Quality Act guidelines for maintenance of existing facilities.

#### **RECOMMENDATION:**

Receive a presentation on the Pilot Street Sweeping Program and provide direction to staff.

#### **Attachment(s):**

1. February 16, 2021 Street Sweeping Pilot Project Information Memorandum
2. October 14, 2021 Street Sweeping Pilot 6-Month Update



# MEMORANDUM

Public Works Department

**DATE:** October 14, 2021

**TO:** Mayor and Councilmembers

**THROUGH:** Steve McHarris, City Manager 

**FROM:** Tony Ndah, Public Works Director

**SUBJECT:** **Street Sweeping Pilot 6-Month Update**

This memorandum provides a 6-month update of the City's Street Sweeping Pilot Program (Pilot), Capital Improvement Program (CIP) #3455. Additional background on the Pilot is included in the February 16, 2021 Street Sweeping Pilot Project Information Memorandum (see Attachment 1). The content of this memorandum is scheduled to be presented to the Transportation Subcommittee on Friday, October 15, 2021.

## **Executive Summary**

City council approved funding for the Street Sweeping Pilot Program in the 2019-2024 Capital Improvement Program. The goal of the Pilot is to reduce litter impacts to nearby waterways and to increase neighborhood beautification in residential areas. This is achieved by placing no parking signage throughout the Pilot areas which instructs residents to move their vehicles during street sweeping times. Clearing vehicles off the street enables the street sweeper to access the curb and properly clean the street.

The Pilot began in March 2021 and will continue for one year, to include all four seasons. Staff has reviewed and analyzed the data collected in the first six months of the Pilot. While the results thus far have shown significant decreases in the number of vehicles blocking the street (on average a 70% reduction in parked cars), which is resulting in cleaner streets, there continue to be vehicles parked on the street during street sweeping times. Therefore, and based on community feedback, staff intends to begin issuing parking citations as a next step.

## **Background**

Four areas in Milpitas were identified for inclusion in the Pilot. The four areas are shown in *Attachment 2*. In each area, "No Parking" signs are posted for a specific 2-hour street sweeping window.

Outreach in multiple languages (including post cards, door hangers, and website) to the residents in the Pilot area occurred in February 2021. Staff have been monitoring the effectiveness of the Pilot since implementation began in March 2021. More information on the Pilot program including a description of the Pilot, a map of Pilot areas, and outreach information is available on the project website:

<https://www.ci.milpitas.ca.gov/street-sweeping-pilot/>.

## **Pilot 6-Month Update and Analysis**

In the month prior to the Pilot launch (February 2021) and regularly thereafter, staff has collected field data on the Pilot areas during street sweeping days. A variety of evaluation metrics are captured, which include: number of curb miles swept, volume/tonnage of material collected, percentage of the street blocked by vehicles, and visual trash assessments of the street cleanliness. The methodology and scale used for the visual trash assessments was developed by the Santa Clara Valley Urban Runoff Pollution

Prevention Program (SCVURPPP) for “on-land visual assessments” and is consistent with the Milpitas Long-Term Trash Load Reduction Plan.

#### Vehicles Parked During Street Sweeping Time

The data indicates that residents are moving their vehicles during street sweeping times (see **Figure 1**). In the first month of the Pilot alone (March), there was a significant decrease of parked vehicles compared to the month prior (February). On average, the Pilot is seeing a 70% reduction in parked vehicles; however, reduction in parked vehicles has leveled off.

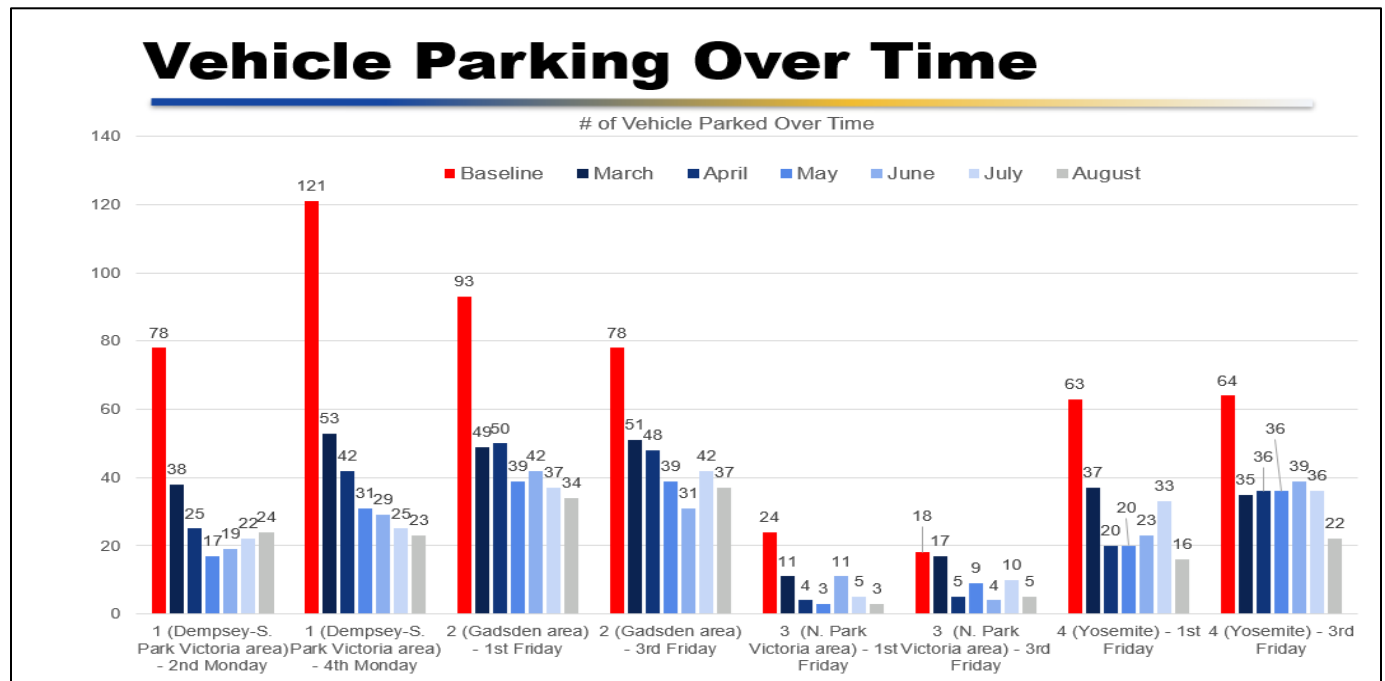


Figure 1. Monthly numbers of vehicles parked in the street during street sweeping times.

Additionally, since the start of the of the Pilot, there has been increased access to the curb in all pilot neighborhood areas. **Figure 2** shows how much distance is swept per month. Regardless of the area, all neighborhoods have had an increase when compared to the baseline data from February. The distance of accessible curb swept is inversely related to the number of vehicles parked on the street on street sweeping day; if there are a lot of vehicles parked on the street, less distance is swept.

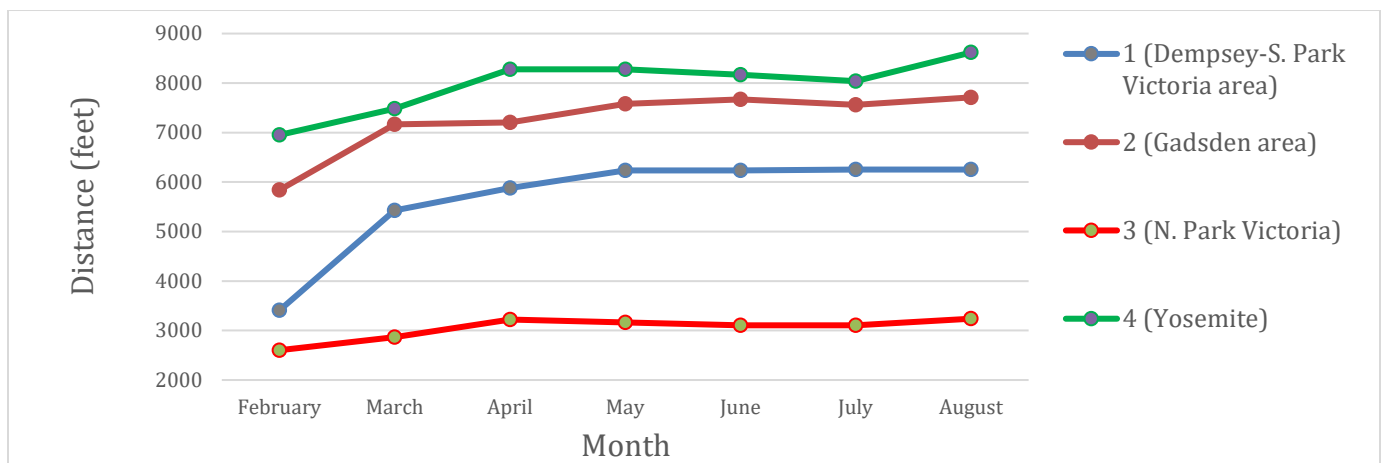


Figure 2. Distance Swept From February – August in the Street Sweeping Pilot Areas

**Tonnage**

MSI collects tonnage information regarding the amount of material that has been swept. The amount of tonnage has increased overall, showing a correlation between the curb access that the street sweeper has due to reduced vehicles parked during sweeping times. Staff expects that the numbers will continue to increase through autumn and winter due to the increased amount of vegetation/leaves.

**Visual Trash Assessments**

Visual assessments follow an A through D ranking system, developed by SCVURPPP, with A having no trash and D having large piles of trash continuously seen. For the analysis, A=1.0 and D=4.0, so the closer the value is to 1.0, the more visually clean an area is. Conversely, the closer the value is to 4.0, the more visually impacted by litter an area is. The data has a trend of starting higher and trending towards 1.0; this is expected as reduction in parked vehicles allow greater access to the curb and more debris is swept.

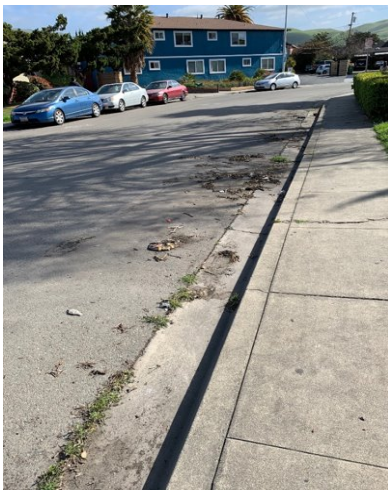


Figure 3. Photos of Selwyn Avenue prior to street sweeping and post.



Figure 4. Litter and debris on street.

**Written Warning Notifications**

One of the Pilot's foci is for residents to move their vehicles on street sweeping days. So far, staff has relied on education through written Parking Warning Notifications and verbal warnings to residents only. Additionally, staff recognizes that there may be more vehicles parked on the streets currently than in pre-COVID times, with many residents working from home. While there has been strong participation from residents in each of the neighborhoods, the data such as in Figure 1 on page 2, that there are still residents that are not participating by moving their vehicles. **Table 1** shows the number of parking warning notifications issued by the Police Department during the first six months in the pilot areas. Of the notifications issued, approximately 25 – 32% were issued to repeat offenders who have already received multiple written warnings. It is important to note that the Parking Warning Notifications include a statement which reads at the bottom, "This is a warning notice. You will not be charged the penalty of \$65.00. However, if you continue to park your vehicle during no parking times, you may be cited and charged a penalty."

| Area         | March      | April      | May       | June      | July       | August    | Total      |
|--------------|------------|------------|-----------|-----------|------------|-----------|------------|
| 1            | 32         | 65         | 27        | 15        | 44         | 31        | 214        |
| 2            | 25         | 40         | 34        | 55        | 29         | 17        | 200        |
| 3            | 19         | 10         | 10        | 14        | 11         | 11        | 75         |
| 4            | 26         | 0          | 17        | 0         | 23         | 15        | 81         |
| <b>Total</b> | <b>102</b> | <b>115</b> | <b>88</b> | <b>84</b> | <b>107</b> | <b>74</b> | <b>570</b> |

Table 1. Warning Notices Issued by Month

### Community Feedback

Staff has conducted frequent field monitoring in the Pilot areas and engaged with residents during this time. Residents in each of the Pilot areas have expressed positive feedback about the program and have appreciated cleaner streets. Some residents were not aware of the existing street sweeping schedule and staff uses the opportunity to educate residents about the cleaning schedule and to encourage residents to move their vehicles. Residents have also contacted staff to ask for citations to begin, expressing frustration that neighbors are not diligent about moving their vehicles. With more residents returning to work, feedback from participating residents, the appropriate warnings on the Parking Warning Notifications and data showing repeat violations from the same vehicles, staff intends to begin issuing parking violation citations.

### Next Steps

Data from the first six months of the Pilot has shown that the “No Parking” signs have been effective and that the streets in the Pilot areas are cleaner. However, close to 30 percent of parked vehicles remain during the designated street sweeping time despite repeat warning notices. Community support of the program is high. To encourage movement of the remaining vehicles during the street sweeping period, staff intends to notify residents through mailed postcards that parking violation citations will start effective November 1.

Staff will continue to collect and track data for these four areas through the remainder of the Pilot, which is scheduled to end in February 2022, and will present a summary of the findings to the City Council, the Transportation Subcommittee, and the Energy and Environmental Sustainability Commission.

### Attachments:

1. [Street Sweeping Pilot Project Information Memorandum, dated February 16, 2021](#)
2. [Street Sweeping Pilot Area Maps](#)



# MEMORANDUM

Public Works Department

**DATE:** February 16, 2021

**TO:** Mayor and Council

**THROUGH:** Steve McHarris, City Manager *Steve McHarris*

**FROM:** Tony Ndah, Public Works Director

**SUBJECT:** Update of Street Sweeping Pilot Project

This memorandum provides information about the City's Street Sweeping Pilot Program (Pilot), Capital Improvement Program (CIP #3455). Staff have been coordinating interdepartmentally and with Milpitas Sanitation, Inc. (MSI) on this Pilot, and have conducted public outreach including informational memos, mailers, and presentations to City Commissions and the Council's Transportation Subcommittee. The Pilot will be launched on March 1, 2021 and will run for one (1) year. A summary of actions taken to date to develop the Pilot, is included in the memorandum.

## Executive Summary

As part of the 2019 – 2024 Capital Improvement Program, Council approved funding for a Pilot Street Sweeping program to address residents' concerns about neighborhood beautification, as well as reducing litter impacts into nearby waterways. The goal of the Pilot program is to evaluate the effectiveness of street sweeping signage in residential areas, to inform residents of when to move their vehicles off the street so that the street sweeper can access the street all the way to the curb, and maximize the collection of litter and debris.

City staff, with assistance from MSI, identified four (4) areas in the City for the Pilot. The areas were chosen based on a review of data from the City's Trash Load Reduction Plan and based on areas identified by MSI as streets where vehicle parking impacts the ability of the street sweeper to access the curb.

The Pilot is scheduled to start on March 1, 2021 and during the Pilot, parking will be prohibited from 10 am to noon on specific days in each Pilot area. Postcards and door-hangers were mailed out this month to residents with information about the Pilot and new street signs have been installed in the pilot area to notify residents of the street sweeping days. Staff are also developing a website which will include information on the Pilot program, sweeping schedules, and a look-up tool for residents to use to get information on the street sweeping day and time for their area.

The Pilot will run for one (1) year and staff will provide periodic updates to Council on the effectiveness of the Pilot program.

### **Background:**

Street sweeping services are included under the City's solid waste franchise agreement and MSI informs residents about the street sweeping program through monthly ads placed in the Milpitas Post, mailing an annual street sweeping postcard, and providing street sweeping routes and the street sweeping schedule on their website. The goal of this outreach is to inform residents of their street sweeping schedule so they can move their vehicles prior to street sweeping. However, parked vehicles blocking street sweeper access continues to be a problem in certain areas of the City. When vehicles are not moved on street sweeping days and the area is congested by street parking, the street sweeper is not able to access the curb in order to properly clean the street. The Pilot aims to install signage in several targeted residential areas to notify residents of their streets sweeping days and times so that residents can move their vehicles. This in turn will allow for more effective street sweeping and will reduce the amount of litter accumulating on local streets and prevent the debris from entering local creeks and waterways during rain events.

### **Pilot Update**

Staff have been coordinating with various departments and MSI to develop the Pilot. The major Pilot development tasks that have been completed to date include:

- Benchmarking other city street sweeping programs
- Identification of pilot areas
- Developing a Pilot Street Sweeping Schedule
- Evaluation of enforcement and citation authority
- Fabrication and deployment of signage
- Outreach to residents

### **Program Benchmarking**

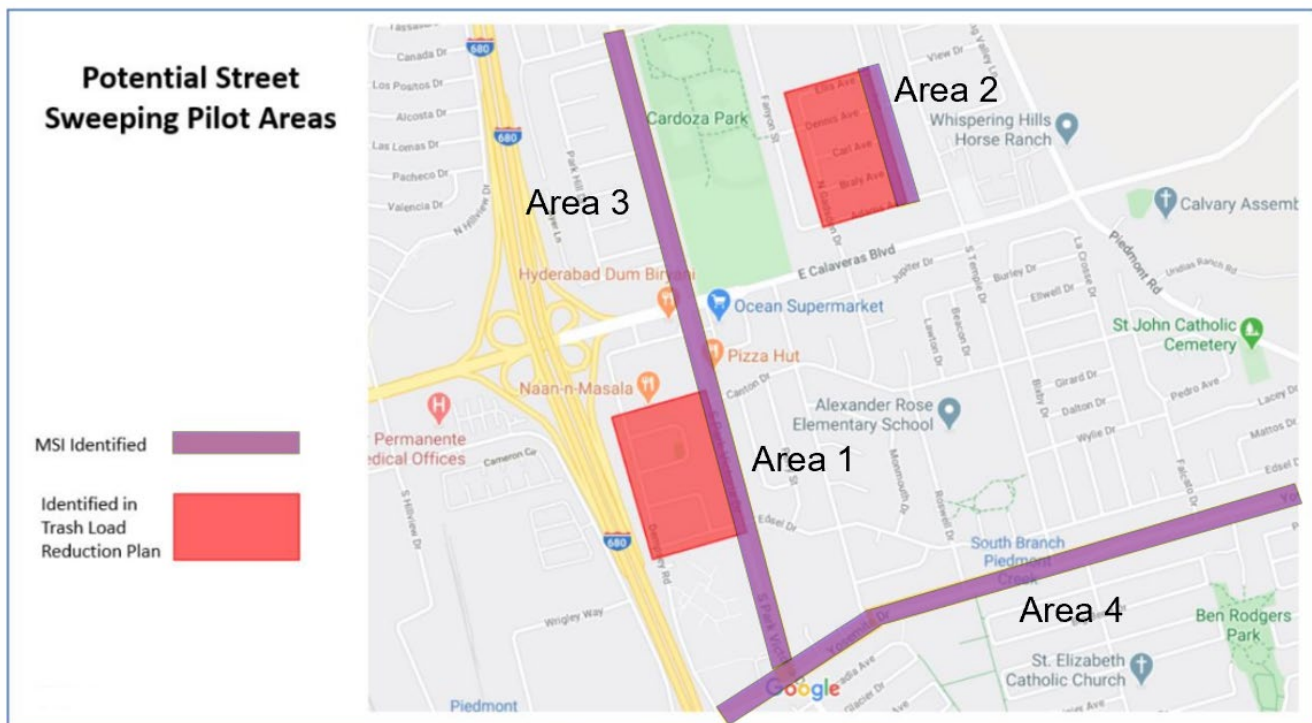
Staff have benchmarked the street sweeping programs of neighboring jurisdictions throughout the Bay Area. Factors that staff examined included: the type of street sweeping signage used (temporary or permanent), the entity performing the street sweeping (in-house, consultant, hauler), strategy for providing parking during street sweeping, enforcement authority, entity, and process, and citation amount. Specifically, two cities emerged with robust residential street sweeping programs – Union City and Hayward.

### **Pilot Area Identification**

Staff evaluated a variety of factors in order to identify Pilot areas. These included:

- areas identified in the City's Trash Load Reduction Plan as areas with litter issues that could benefit from an enhanced street sweeping,
- areas identified by MSI where parking impacts the ability of the street sweeper to access the curb,
- make-up of the neighborhood (whether single-family or multi-family),
- street type, and
- geographic location.

As a result, staff identified four areas to be included in the Pilot program shown on the map below:



- **Area 1** – this area neighbors Interstate 680 and is encompassed by Dempsey Rd, Edsel Dr, South Park Victoria Dr, and Selwyn Dr. The two main streets in the pilot are Selwyn Dr and Shirley Dr. Although South Park Victoria is composed of single-family homes, the majority of this area contains multi-family dwellings. Of the four areas, Area 1 has the most congested parking and litter/debris.
- **Area 2** – this area sits to the east of Cardoza Park and is contained by Ellis Ave, Gadsden Dr, Adams Ave, and Lynn Ave. Streets running within the boundaries include Dennis Ave, Carl Ave, and Braly Ave. Although Lynn Ave and Adams Ave have multi-family dwellings on one side of the street and single-family homes on the other side of the street, every other street in this area contains only single-family homes.
- **Area 3** – this area runs along Park Victoria Dr, a wide street, from Yosemite Dr to Kennedy Dr. Due to the presence of commercial areas from Yosemite Dr to Ayer St, the focus for this pilot will be Ayer St to Kennedy Dr, since this length is comprised of residential/single-family homes.
- **Area 4** – this area is on Yosemite Dr, from Piedmont Rd to South Park Victoria Dr. This area is mostly single-family homes and contains a small stretch where Merryhill School is located.

### Pilot Street Sweeping Schedule

Staff has coordinated with MSI to develop the street sweeping schedule for the Pilot. As the entity performing the street sweeping, MSI has insight into program logistics, scheduling, outreach, and metrics and evaluation. Staff has discussed options with MSI to ensure that the pilot locations are able to be addressed with no, or little, disruption to the existing established street sweeping schedules. As a result, the Pilot program will employ a “split street” cleaning schedule, meaning that only one side of the street will have prohibited parking during the street sweeping window in order to allow cars to be parked on the other side. Typical residential areas are swept every two weeks, while in the pilot areas, one side of the street will have a thorough sweeping once a month. During this Pilot, parking will be prohibited from 10AM to Noon on specified days in each Pilot area.

Staff have mapped out signage locations and associated street sweeping schedules in all four pilot areas. Signs have been fabricated and Staff anticipates sign installation to be completed by mid-February.

### Enforcement

Staff has identified that the City's Municipal Code allows for street sweeping enforcement. *Milpitas Municipal Code Section V-100-12.11 - Streets Under Construction, Being Cleaned or Used for Movement of Equipment* prohibits parking a vehicle on a street or portion of a street when the street is being cleaned with authorized signage is in place. The City's Master Fee Schedule also includes a citation amount for violations of this section. However, the City of Milpitas currently has no street sweeping signage to notify the public of street sweeping restrictions and, therefore, has not routinely used or enforced this section for street sweeping. A key component of the Pilot is the placement of new authorized signage with street cleaning information in Pilot implementation areas.

The Police Department will be assisting with this Pilot and will patrol the areas and issue warning notices to vehicles that remain parked during signed street sweeping periods. During this pilot, staff will be using signage, outreach, and warning citations to encourage vehicles to be moved during street sweeping.

### Pilot Outreach

Outreach in the form of postcards and door-hangers have been developed in multiple languages and are being sent out to residents in the Pilot areas this month. Staff are also developing a website which will include information on the Pilot, schedule, and a tool to look-up whether or not a home is in the Pilot area and if so, what the street cleaning day and time will be. The website will also include a link for non-Pilot residents to check their regular street sweeping schedule. Because this Pilot is limited to specific areas in Milpitas, staff is not recommending use of social media at this time in order to prevent confusion among households not included in the Pilot areas.

Staff has presented this information on the development of this Pilot to the Energy and Environmental Sustainability Commission, the Community Advisory Commission, and the City Council's Transportation Subcommittee, in order to provide a status update on the project as well as to gain feedback and input on Pilot program design and proposed implementation.

**Next Steps**

Once the Street Sweeping Pilot Program is implemented, staff will begin evaluating the program on an ongoing basis, through a set of evaluation metrics which include: number of curb miles swept, volume/tonnage of material collected, number of parking warnings issued, percentage of the street blocked by vehicles, and visual audits/assessments of street cleanliness.

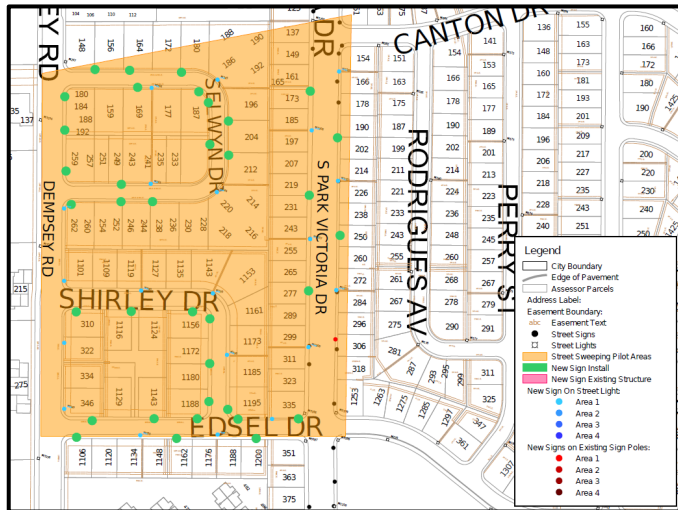
It should be noted that staff is sensitive to the effects of the COVID-19 pandemic and the County's shelter-in-place orders and recognizes that there may be more vehicles parked on streets currently than in pre-COVID times. As a result, the focus of the Street Sweeping Pilot will be enforcement through education and warnings, as opposed to through citations. The goal of the pilot is to provide curb access to the street sweeper so that there is effective street sweeping once parked vehicles are moved. Citations and penalties will be enforced, only if necessary.

The Street Sweeping Pilot project will be a year-long endeavor, in order to evaluate all four seasons. The Pilot is slated to start March 1, 2021 with periodic reports to the various Commissions, Transportation Subcommittee, and City Council.

## Attachment 2. Street Sweeping Pilot Areas

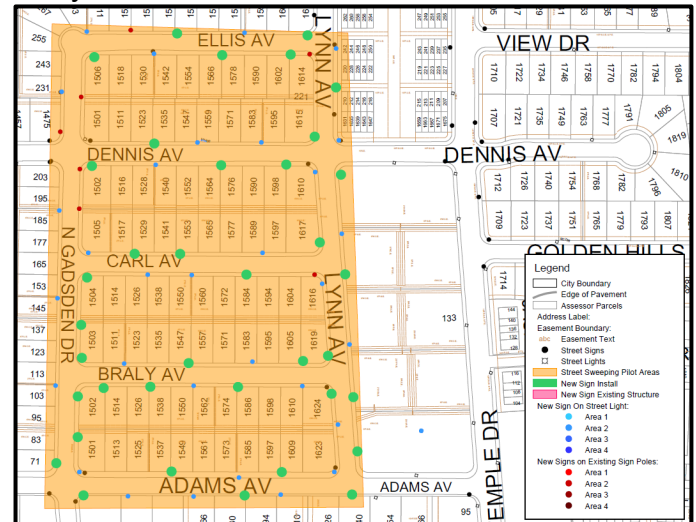
### AREA 1:

South Park Victoria Dr, Edsel Dr  
Dempsey Rd, Shirley Dr, Selwyn Dr



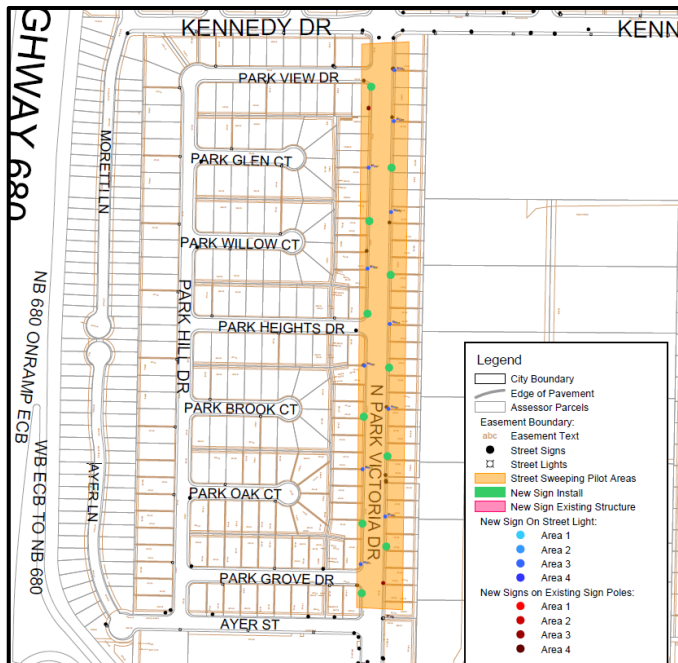
### Area 2:

Lynn Ave, Adams Ave,  
Gadsden Dr, Ellis Ave, Dennis Ave, Carl Ave,  
Braly Ave



### Area 3:

North Park Victoria Dr (between Kennedy Dr  
and Ayer St)



### Area 4:

Yosemite (between Piedmont Rd and South  
Park Victoria Dr)

